
BANK SECRECY LAW

Purposes:

1. to encourage people to deposit their money in banks
2. to discourage private hoarding so that the banks may lend out the money and assist in the economic development of the country

Prohibited Acts:

1. the EXAMINATION AND INQUIRY OR LOOKING into **all deposits of whatever nature** with banks or banking institutions in the Philippines (including investments in bonds issued by the Governments or its political subdivisions and instrumentalities) by
 - i. any person or
 - ii. any government official or
 - iii. any bureau or
 - iv. any office

2. the DISCLOSURE by
 - i. any OFFICIAL of any banking institution or
 - ii. any EMPLOYEE of any banking institution

to ANY UNAUTHORIZED PERSON of any information concerning the said deposit.

- M, a newspaper columnist, while making a deposit in a bank, overheard a bank teller informing a co-employee that G, a well-known public official, has just a few hundred pesos in G's bank account and that her check will probably bounce. M wrote about this information in his newspaper column. G filed a complaint against M for unlawfully disclosing information about her bank account.

The suit will not prosper. The Law on Secrecy of Bank Deposits does not penalize the mere receipt of information about a bank account. M, having merely overheard the information on G's account and not having examined, inquired or looked into the said account cannot be penalized under Sec. 2 of the Bank Secrecy Law. Neither could he be penalized under Sec. 3 of the Bank Secrecy Law since Sec. 3 refers to disclosures made by officials or employees of banking institutions.

- A has P10,000 in his savings account, P20,000 in his checking account, P30,000 in his money market placement and P40,000 in a trust fund. Which of the accounts are covered by the Secrecy of Bank Deposits Law?

Only the savings and checking account are covered. The money market placement and the trust fund are not covered.

- A bought some goods from a department store and paid with his personal check. The check was dishonored. On the assumption that the department store did not know who A was, the store manager inquired from the check's drawee bank the name of the dishonored check. The drawee bank refused to disclose the name of the drawer invoking the Secrecy of Bank Deposits Law.

In this case, the bank is not justified in not divulging the name of the drawer to the store manager. The store manager is merely inquiring as to the name of the drawer of the check. To divulge the same would not in anyway amount to disclosure of any information concerning his deposits. Also, the inquiry is not an investigation of any balance in favor of the drawer. To include such disclosure within the ambit of the prohibition would be unduly straining and stretching the meaning of the Secrecy of Bank Deposits Law.

Instances When Examination or Disclosure of Information about Bank Deposits is Allowed

1. upon WRITTEN PERMISSION OF THE DEPOSITOR
2. in cases of IMPEACHMENT
3. upon order of a competent court in cases of
 - i. BRIBERY of public officials or
 - ii. DERELICTION of duty of public officials
4. in cases where the money deposited or invested is the subject matter of the litigation

Mellon Bank vs. Magsino

Even in cases not involving prosecution under the Anti-Graft and Corrupt Practices Act, an inquiry into the whereabouts of the amount converted necessarily to whatever is concealed (by being held or recorded in the name of persons other than the one responsible for illegal acquisition) inasmuch as the case is aimed at recovering the amount converted.

5. upon order of the court in cases of UNEXPLAINED WEALTH UNDER SEC. 8 OF THE ANTI GRAFT AND CORRUPT PRACTICES ACT – RA 3019 (PNB v. Gancayco)

Banco Filipino vs. Purisima

The permitted inquiry into illegally acquitted property in anti-graft cases extends to instances where such property is concealed by being held by or recorded in the name of other persons.

6. upon order of the Commissioner of Internal Revenue in respect of the bank deposits of a decedent for the PURPOSE OF DETERMINING SUCH DECEDENT'S GROSS ESTATE (Sec. 6 [F] [1], NIRC)
7. upon the order of the Commissioner of Internal Revenue in respect of the bank deposits of a taxpayer who has filed an APPLICATION FOR COMPROMISE OF HIS TAX LIABILITY under Sec. 204 (A) (2) of the NIRC by reason of financial incapacity to pay his tax liability (Sec. 6 [F] [2], NIRC)
8. upon ORDER OF THE OMBUDSMAN (Sec. 15 [8], RA 6770)
 - M was able to secure a favorable judgment against P for recovery of a sum of money and the said judgment became final and executory. M was informed by someone that P might have a deposit with a bank in which M was a stockholder. Invoking his right as a stockholder to inspect the corporate records, M demanded to see the records to see if P really had a savings deposit with the bank. The bank manager refused invoking the Secrecy of Bank Deposits Law.

In this case, the stockholder's right to the inspection of corporate books will have to bow to the provisions of the Secrecy of Bank Deposits Law. The case of M does not fall under any of the exceptions. The only remedy of M is to ask the court for a writ of garnishment to be served on the bank.

- The City Fiscal required a bank to produce at a hearing the records of the bank deposits of A. The bank refused invoking the Secrecy of Bank Deposits Law. Threatened with prosecution, the bank filed an action for declaratory relief. May the bank be compelled to disclose the bank deposits of A?

Unless the case comes under one of the exceptions, the court cannot compel the bank to disclose A's deposits.

Garnishment of Bank Deposits

- garnishment of bank deposits will not violate the bank secrecy law

China Bank vs. Ortega

The discussion in the conference committee report on the Senate and House bills which eventually became RA 1405 indicates that it was not the intention of the legislature to place bank deposits beyond the reach of the execution to satisfy a final judgment. Furthermore, there is no real inquiry in an order for garnishment and if the existence of the deposit were disclosed, the disclosure was purely incidental to the execution process.

RCBC vs. de Castro

The SC said that to expose garnishees to risks for obeying court orders and processes would only undermine the administration of justice.

PCIB vs. Court of Appeals

Garnishment is considered as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation.

The garnishee (the 3rd person) is obliged to deliver the credits, etc. to the proper officer issuing the writ and “the law exempts from liability the person having in his possession or under his control any credits or other personal property belonging to the defendant, of such property be delivered or transferred to the clerk, sheriff, or other officer of the court in which the action is pending.

Since there is no evidence that the bank divulged the information that its client had an account with the said bank and it is undisputed that the said account was properly the object of the notice of garnishment and the writ of execution carried out by the deputy sheriff, a duly authorized officer of the court, there is no violation of the Secrecy of Bank Deposits Law.

- The branch manager of a bank, in response to a notice of garnishment, discloses to the sheriff the outstanding deposit balance of the judgment debtor with the bank as of the date of the receipt of the garnishment notice. The judgment debtor files a criminal complaint for violation of the Bank Secrecy Law.

In this case the criminal complaint will not prosper. The prohibition against examination of, or inquiry, into a bank deposit does not preclude its being garnished to insure satisfaction of a judgment. Indeed, there is no real inquiry in such a case, and if the existence of the deposit is disclosed, the disclosure is purely incidental to the execution process.

Application of the Secrecy of Bank Deposits on Safety Deposit Boxes

- the prohibition against inquiry or disclosure of bank accounts under the Secrecy of Bank Deposits Law does NOT to apply to safety deposit boxes

Special Note on Foreign Currency Deposits

- the Foreign Currency Deposit Act (RA 6426) allows any person to deposit,, and banks to accept for deposit ANY foreign currency ACCEPTABLE AS PART OF OUR INTERNATIONAL RESERVE
- unlike ordinary bank deposits, foreign currency deposits enjoy the following unique privileges

1. absolute confidentiality
 - EXCEPT UPON WRITTEN PERMISSION OF THE DEPOSITOR, a foreign currency deposit cannot be examined, inquired, or looked into by any person or office, whether public or private, or judicial, administrative or legislative
 - M withdrew without authority funds of the partnership in the amounts of P500,000 and \$50,000. He deposited the P500,000 in his personal peso current account and the \$50,000 in his foreign currency savings account. The partnership sued M to return the money.

In this case, the bank can be compelled to disclose the peso deposit of M since sec. 2 of RA 1405 allows the disclosure of deposits in case where the money deposited is the subject matter of litigation.

With respect to the foreign currency deposit, Under the Foreign Currency Law, the exemption to the prohibition against disclosure of information concerning bank deposits is the written consent of the depositor

2. numbered accounts
 - authorized banks may adopt a numbered account system for recording and servicing the said deposits
3. rate of interest
 - authorized banks are free to pay any rate of interest
4. taxes
 - the interest received by an individual residents, domestic and resident foreign corporations from such

deposits are subjected to a 7.5% final income tax

- there is NO final income tax on the interest received by non-resident individuals and non-resident foreign corporations

5. court order or process

- EXEMPT from attachment, garnishment or any other order or process of any court, legislative or administrative body, or government agency whatsoever

Salvacion vs. Central Bank of the Philippines

Bartelli, a foreign transient, deposited his dollars in a foreign currency account with China Bank. Bartelli raped Salvacion. A criminal case for rape and a civil action for damages for rape were filed. The SC said that the exemption from garnishment granted to foreign currency deposits is inapplicable to a foreign transient.

6. new enactment or regulation

- in the event that a new enactment or regulation is issued decreasing the rights granted under the law, such new enactment or regulation SHALL NOT APPLY TO FOREIGN CURRENT DEPOSITS ALREADY MADE or existing at the time of issuance of such new enactment or legislative

TRUTH IN LENDING ACT

Purpose

- to protect citizens from a lack of awareness of the true cost of credit to the user by assuring a full disclosure of such cost with a view to preventing the

uninformed use of credit to the detriment of the national economy

Obligation of the Creditors

- furnish to each person TO WHOM CREDIT IS EXTENDED PRIOR TO THE CONSUMMATION OF THE TRANSACTION, a disclosure statement which contains the following:

1. the cash price or delivered PRICE OF THE PROPERTY OR SERVICE TO BE ACQUIRED
2. THE AMOUNTS, IF ANY, TO BE CREDITED AS DOWN PAYMENT and/or trade-in
3. the difference between the amounts set forth under clauses (1) and (2)
4. the charges, individually itemized, which are to be paid by such person in connection with the transaction but which are not incident to the extension of credit (i.e. NON-FINANCE CHARGES)
5. the TOTAL AMOUNT to be financed
6. the FINANCE CHARGES expressed in terms of pesos and centavos
7. the PERCENTAGE THAT THE FINANCE CHARGES bears to the total amount financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

Creditor

- any person engaged in the business of extending credit (including any person who has a regular business practice of making loans or sells or rents property or services on a time, credit or installment basis, either as principal or as agent) who requires as an incident to the extension of credit the payment of a finance charge

Disclosure Statement

- the statement which a creditor is obliged to furnish each person to whom a credit is extended prior to the consummation of the transaction in order to protect

the said person from a lack of awareness of the true cost of credit

- there is no compliance with the Truth in Lending Act if the creditor merely gives the total; it is required that the breakdown (detailed information) be given
- the disclosure statement is given BEFORE THE AGREEMENT IS MADE
- D bought a car on installment basis and had it financed by a financing company. In addition to the advertised selling price, the financing company imposed financing and non-financing charges. The disclosure statement failed to include the non-financing charges. However, the conditional deed of sale which the parties executed mentioned the total amount indicated therein included such non-finance charges.

In this case, there was no substantial compliance with the Truth in Lending Act. The law provides that the creditor must make a full disclosure of the credit cost. The statement that the total amount due includes the principal the financial charges, and non-financial without specifying the amounts due on each portion thereof would be insufficient and unacceptable.

A violation of the Truth in Lending Act will not adversely affect the validity of the contract itself. The violation of the Truth in Lending Act would allow D to refuse payment of financial charges or, if already paid, to recover the same. D may also initiate criminal charges against the creditor.

Credit Transactions within the Scope of the Law

1. loan
2. mortgage
3. deed of trust
4. advance
5. discount
6. conditional sales contract
7. contract to sell
8. contract of sale of property or services either for present or future delivery under which all or part of the price is payable subsequent to the making of such sale or contract

9. rental purchase contract
10. contract for hire
11. contract for bailment
12. contract for leasing of property
13. option
14. demand
15. lien
16. pledge
17. any claim against, or for the delivery of, property or money
18. any purchase or acquisition of, or any credit upon the security of any obligation or claim arising out of any of the foregoing
19. any transaction or series of transactions having a similar purpose or effect

Credit Transactions Outside the Scope of the Law

1. those that DO NOT INVOLVE THE PAYMENT OF FINANCE CHARGE by the debtor
2. those in which the DEBTOR IS THE ONE SPECIFYING A DEFINITE AND FIXED SET OF CREDIT TERMS such as
 - a) bank deposits
 - b) insurance contracts
 - c) sale of bonds, etc.

- no disclosure statement is required in these 2 instances

Finance Charges

- amounts to be paid by the debtor INCIDENT TO THE EXTENSION OF CREDIT such as
 - a) interests
 - b) discounts
 - c) collection fees
 - d) credit investigation fees
 - e) attorney's fees

Consolidated Bank and Trust vs. Court of Appeals

The SC held that while banks are authorized by the CB to collect handling charges on loans, a CB Circular requires banks to adhere strictly to the provisions of the Truth in Lending Act such that if the promissory note signed by the borrower does not contain a stipulation on the payment of handling charges, the bank cannot charge and collect such handling charges from the borrower.

Non-Finance Charges

- amounts **ADVANCED BY A CREDITOR FOR ITEMS NORMALLY ASSOCIATED WITH THE OWNERSHIP OF PROPERTY OR THE AVAILMENT OF THE SERVICES** purchased which are not **INCIDENT TO THE EXTENSION OF CREDIT** (i.e. when a debtor purchases a car on credit, the creditor may advance the insurance premium as well as the registration fee)

Violation of Truth in Lending Act

1. **DOES NOT INVALIDATE** the loan agreement
2. debtor can **REFUSE** to pay **FINANCE CHARGES**
3. if the debtor had already paid the finance charges, the debtor can **RECOVER FINANCE CHARGES**
4. debtor can file a **CRIMINAL ACTION** against the creditor

PHILIPPINE DEPOSIT INSURANCE CORPORATION ACT

Purposes:

1. to protect depositors from bank failures and other similar situations preventing banks from paying out deposits
2. to encourage people to deposit in banks

PDIC

- the government-owned entity mandated by law to insure the depositors of all banks entitled to the benefits of insurance under this Act

Deposit Liabilities Required to be Insured by the PDIC

- the following deposits are required to be insured with the PDIC
 1. deposit liabilities of **ANY BANK** engaged in the business of receiving deposits
 2. deposit liabilities of **ANY BANKING INSTITUTION** engaged in the business of receiving deposits

PDIC vs. Court of Appeals

In order that a claim for deposit insurance with the PDIC may prosper, the law requires that a corresponding deposit be placed in the insured bank.

- coverage is **COMPULSORY**

Deposit

- the unpaid balance of **MONEY** or its equivalent **RECEIVED BY A BANK** in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account for which is evidenced by a passbook, check and/or certificate of deposit, printed or issued in accordance with Central Bank rules and regulations and other applicable laws
- Gen. Rule: any obligation of a bank which is payable at the office of the bank **LOCATED OUTSIDE** of the Philippines shall **NOT BE A DEPOSIT** for any purpose of this Act or included as part of the total deposits or of insured deposit

Exception: any insured bank incorporated under Philippine law which maintains a branch outside the Philippines if approved by the PDIC Board of Directors may elect to include for insurance its deposit obligations payable only at such branch

- trust funds are not considered as insured deposits
- a safety deposit box is not insured under the PDIC Law for 2 reasons
 1. it is not within the definition of deposit
 2. a moral hazard is created if the safety deposit box is covered; it would encourage morally honest people to be dishonest since only they would know what's inside the box
- A has P10,000 in his savings account, P20,000 in his checking account, P30,000 in his money market placement and P40,000 in a trust fund. Which of the accounts are covered by the PDIC Law?

In this case, only the savings and checking account are covered. The P40,000 trust fund is expressly exempt from the coverage of the PDIC Law.

As for the P30,000 money market, it shall not also be insured because of its very nature which involves market dealing in standardized short-term credit instruments where lenders and borrowers do not deal directly with each other but through a middle man or

dealer in the open market. If the money is not received by the bank, it cannot be insured.

Termination of Insured Status

1. when the banks fails or refuse to pay assessment
 - the bank has 30 days from the written notice given by the PDIC to correct such failure or refusal, otherwise, the insured status of the bank shall be terminated
 - a) written notice of such termination shall be given to each depositor by the bank
 - b) PDIC shall publish the notice of termination of the insured status of the bank
 - after termination of the insured status of the bank, deposits shall continue to be insured for a period of 90 days
2. when the banks become insolvent

Instance When PDIC Becomes Liable to Pay the Insured Deposit

- PDIC is liable to pay the insured deposits in a bank when the bank is closed on account of INSOLVENCY
- a bank is ordered closed on account of insolvency when ORDERED CLOSED by the Monetary Board of the Bangko Sentral ng Pilipinas pursuant sec. 30 of the BSP Law

Extent of PDIC's Liability to a Bank Depositor

- maximum coverage of P100,000 per depositor per capacity
- all these types of deposit are covered: demand, savings, and time deposits; if a depositor has all 3 types of accounts, he can only recover up to P100,000 being considered as one depositor
- in determining the amount due to any depositor, all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the name of others shall be added together

- the liability of the PDIC is per bank and NOT per branch

- As of Jan. 15, A had various sums of money with ProBank: P35,000 in a time deposit which is in her name in trust for her 12 year old son; P60,000 in a savings account under her name; P20,000 in a safety deposit box maintained under her name as treasurer of, and in trust for, the neighborhood association; and a checking account under her name which has P40,000 in it. On the same day, ProBank becomes insolvent. How much can A recover?

In this case, A can recover all of the money she has with ProBank: the P100,000 in the time deposit and checking accounts under her name, which she is holding in her personal capacity; the P35,000 she holds in a time deposit in trust for her son, which she is holding in her capacity as a trustee for her son; and the P20,000 belonging to her neighborhood association which she was keeping in a safety deposit box under her name. The safety deposit box is not covered by the PDIC insurance but since it is in a safety deposit box, it is physically segregated from the rest of the assets of the bank.

Deposits in Foreign Currency

- deposit obligations in foreign currency of any insured bank are insured

Manner of Payment of the Insured Deposits

1. cash
2. making available to each depositor a transferred deposit in another insured bank in an amount equal to the insured deposit of such depositor

Rules Regarding Deposits in Foreign Currency

1. the deposit in foreign currency shall be CONVERTED TO ITS EQUIVALENT amount in Philippine pesos at the interbank rate obtaining on the DATE THE BANK WAS CLOSED OR ON INSOLVENCY
2. insurance coverage shall NOT EXCEED P40,000 for each depositor
3. liability of PDIC to each depositor shall be payable in Philippine pesos

Transferred Deposit

- a deposit in an insured bank made available to a depositor by the PDIC as payment of the insured deposit of such depositor in a closed bank and ASSUMED BY ANOTHER INSURED BANK
- in a transferred deposit, it is actually PDIC's money which is used to pay except that it is coursed through another bank
- this is done for 2 reasons
 1. in order to keep the money within the banking system keeping your money hidden under your mattress
 2. if the amounts are substantial, for safety

Bar of Claim by Depositor

- must file a claim for the insured deposit with the PDIC within 18 months after the Monetary Board ordered its closure
- the claimant must enforce the claim against the PDIC within 1 year after the 18 month period mentioned

Effect of Payment to the Depositor of His Insured Deposit

1. PDIC shall be SUBROGATED to all rights of the depositor against the closed bank TO THE EXTENT OF SUCH PAYMENT
 - subrogation shall include the right on the part of PDIC to receive the dividends and payments from the proceeds of the assets of such closed bank and recoveries on account of stockholder's liability as would have been payable to the depositor as a claim for the insured deposits, but such depositor shall retain his claim for any insured portion of his deposit
2. PDIC is DISCHARGED from liability of the insured deposit

Other Powers of PDIC

1. issue CEASE AND DESIST ORDERS to
 - a) an insured bank or
 - b) any of its directors or agents to correct

- i. unsafe or unsound banking practices in conducting the business of the bank
 - refers to any action or lack of action which in contrary to the generally accepted standards of prudent operation, the possible consequences of which, if continued, would result in abnormal risk of loss or damage to a bank, depositors and its shareholders or even the depletion of the Insurance fund administered by the PDIC
- ii. violations of any law or regulation to which the insured bank is subject
- iii. violations of the provisions of the provisions of the PDIC Law as amended, or nay order, rule or instruction issued by the PDIC or any written condition imposed by the PDIC in connection with any transaction with the PDIC

- the purpose of the Cease and Desist order is to protect the depositors and the PDIC against existing or potential risk exposures from the said practices or violations

2. provide FINANCIAL ASSISTANCE to an insured bank in danger of closing
3. BORROW from the BSP and from any bank designated as depository or fiscal agent of the Philippine Government
4. ISSUE BONDS, DEBENTURES AND OTHER OBLIGATIONS with the approval of the President of the Philippines
5. act as RECEIVER of any banking corporation

BANGKO SENTRAL NG PILIPINAS LAW

2. to PROMOTE AND MAINTAIN MONETARY STABILITY and the convertibility of the peso

Policy of the State

- to maintain a central monetary authority that shall
 1. function and operate as an INDEPENDENT AND ACCOUNTABLE BODY in the discharge of its responsibilities concerning money, banking and credit; and
 2. enjoy FISCAL AND ADMINISTRATIVE AUTONOMY

Monetary Board

- the powers and functions of the BSP are exercised by the Monetary Board

Ways in Which BSP as an Independent and Accountable Body and With Fiscal and Administrative Autonomy is Maintained

Responsibilities of the BSP

1. to provide POLICY DIRECTION in the areas of
 - a) money
 - b) banking
 - c) credit
2. to SUPERVISE THE OPERATION OF BANKS
3. to REGULATE THE OPERATION of
 - a) finance companies
 - b) non-bank financial institutions performing quasi-banking functions (i.e. quasi-banks)
 - c) institutions performing similar functions

1. capital

- P50,000,000,000 fully subscribed by the Government
- P10,000,000,000 of the P50,000,000,000 shall be fully paid by the Government within 2 years from the effectivity of the law

2. Monetary Board composition

- 7 members appointed by the President for a term of 6 years each

a) governor of the BSP

- Chairman of the Monetary Board
- whenever he is unable to attend a meeting of the Board, he shall designate a Deputy Governor to attend; in such an event, the Monetary Board shall designate one of its members to act as Chairman
- must be natural born citizen of the Philippines
- must be at least 40 years of age

b) a member of the Cabinet designated by the President

- whenever the designated member of the cabinet is unable to attend a meeting of the Board, he shall designate an Undersecretary from his department to attend
- must be natural born citizen of the Philippines

Primary Objectives of the BSP

1. to MAINTAIN PRICE STABILITY conducive to a balanced and sustainable growth of the economy and
 - price refers to the general price level which is a composite or weighted average of the prices of commodities and services; it does not refer to prices of individual goods and services purchased by the public
 - price stability connotes 2 things
 1. changes of the general price level or domestic inflation are minimal
 2. such changes are not severely erratic or
 - balanced refers to monetary policy that is neutral with respect to all sectors of the economy
 - sustainable implies that a certain level of growth is maintained without undergoing the boom-bust characteristic of an unstable economy

- must be at least 40 years of age
- c) 5 members from the private sector
 - all shall serve full-time
 - staggered appointments
 - must be natural born citizen of the Philippines
 - must be at least 40 years of age
- 3. reappointment of Monetary Board members
 - no member may be reappointed MORE THAN ONCE
- 4. special disqualification for Monetary Board appointees
- 5. divestment requirement for Monetary Board members
- 6. removal by the President
- 7. post-BSP restriction
- 8. who can call Monetary Board meetings
- 9. reorganization of personnel
- 10. indemnification of BSP officials
- 11. extraordinary diligence
- 12. transparency
- 13. engagement of private counsel
- 14. auditor must be a CPA

Functions of the BSP

1. as bank of issue
 - the BSP has the sole power to issue currency (i.e. notes and coins) in the Philippines
2. as government banker
3. as government agent
4. as government financial advisor
5. as custodian of banks' cash reserves
 - refers to the reserves against
 - a) deposit liabilities
 - b) liabilities for deposit substitutes
 - c) funds held in trust which banks may be required to maintain with the BSP
6. as custodian of country's international reserves
7. as bank of rediscount and lender of last resort
 - the BSP may rediscount, buy and sell
 - a) bills
 - b) acceptances
 - c) promissory notes

- d) other credit instruments held by banks
- the BSP may also grant
 - a) emergency loans
 - b) advances
 to banks under certain circumstances
- 8. as bank of central clearance and settlement
- 9. as controller of credit

Institutions Subject to the Supervision and Examination of the BSP

- the BSP has supervision over and can conduct periodic or special examinations of
 2. BANKING INSTITUTIONS including their subsidiaries and affiliates engaged in ALLIED ACTIVITIES
 3. QUASI BANKS including their subsidiaries and affiliates engaged in ALLIED ACTIVITIES

Restraining Order or Injunction of BSP Examinations of Banks and Quasi-Banks

- Gen Rule: no restraining order or injunction is allowed

Exception: ONLY in if the following requisites are present

1. there is convincing proof that the action of the BSP is PLAINLY ARBITRARY AND MADE IN BAD FAITH and
2. the plaintiff files with the clerk or judge of the court in which the action is pending a BOND executed in favor of the BSP in an amount fixed by the court

Instruments of BSP Action

1. gold and foreign exchange operations
 - the BSP may buy and sell
 - a) gold in any form
 - b) foreign notes
 - c) spot exchange
2. credit operations
3. open market operations
 - refers to the purchases and sales of securities by the BSP with the primary objective of achieving price stability
4. reserve requirements
 - the purpose of serve requirements is to control the volume of money created by credit operations of the banking system

5. selective regulation of bank operations
 - a) interest rate policy
 - b) margin requirements against letters of credit
 - c) maximum permissible maturities of loans and investments
 - d) kind and amount of security against bank loans
 - e) loans and investment portfolio ceilings
 - f) minimum capital ratios
6. moral influence

Receivership

Exchange Crisis

1. imminence of or during an exchange crisis or
2. in time of national emergency the Monetary Board with the concurrence of at least 5 MEMBERS and with the APPROVAL of the PRESIDENT of the Philippines may
 - a) temporarily suspend or restrict sales of exchange by the BSP
 - b) subject all transactions in gold and foreign exchange to license by the BSP
 - c) require than any foreign exchange thereafter obtained by any
 - iv. person residing or
 - v. entity operating in the Philippines

Conservator

First Philippine International Bank vs. Court of Appeals

The law merely gives the conservator the power to revoke contracts that are under existing law deemed to be defective (i.e. void, voidable, unenforceable or rescissible). Hence, the conservator merely takes the place of a bank's board of directors. What the said board cannot do – such as repudiating a contract validly entered into under the doctrine of implied authority – the conservator cannot do either. Ineluctably, his power is not unilateral and he cannot simply repudiate valid obligations of the Bank. His authority would be only to bring court actions to assail such contracts – as he has already done so in the instant cases. A contrary understanding of the law would simply not be permitted by the Constitution. Neither by common sense. To rule otherwise would be to enable a failing bank to become solvent, at the expense of 3rd parties, by simply getting the conservator to unilaterally revoke all previous dealing which had one way or another to be considered unfavorable to the Bank, yielding nothing to perfected contractual rights nor vested interests of the 3rd parties who had dealt with the Bank.

to be delivered to the BSP or to any bank designated by the BSP for the purpose, as the effective exchange rate or rates