The Banking Regulation Review

Fourth Edition

Editor
Jan Putnis

Law Business Research

The Banking Regulation Review

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Banking Regulation Review, 4th edition
(published in April 2013 – editor Jan Putnis).

For further information please email
Adam.Sargent@lbresearch.com

The Banking Regulation Review

Fourth Edition

Editor
Jan Putnis

Law Business Research Ltd

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

www.TheLawReviews.co.uk

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGERS
Adam Sargent, Nick Barette

MARKETING MANAGERS
Katherine Jablonowska, Thomas Lee, James Spearing

PUBLISHING ASSISTANT
Lucy Brewer

PRODUCTION COORDINATOR
Lydia Gerges

HEAD OF EDITORIAL PRODUCTION
Adam Myers

CHIEF SUBEDITOR
Jonathan Allen

SUBEDITORS
Caroline Rawson, Anna Andreoli

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2013 Law Business Research Ltd
www.TheLawReviews.co.uk
No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. The publishers and the editor accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2013, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-907606-59-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAET BA-HR DA

AFRIDI & ANGELL

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ANDERSON MŌRI & TOMOTSUNE

ARTHUR COX

BONELLI EREDE PAPPALARDO

BREDIN PRAT

BUN & ASSOCIATES

CHANCERY CHAMBERS

CLAYTON UTZ

CONSORTIUM – TABOADA & ASOCIADOS

CONSORTIUM CENTRO AMÉRICA ABOGADOS

DAVID GRISCTI & ASSOCIATES

DAVIES WARD PHILLIPS & VINEBERG LLP

DAVIS POLK & WARDWELL LLP

DE BRAUW BLACKSTONE WESTBROEK

DLA PIPER WEISS-TESSBACH RECHTSANWÄLTE GMBH

ELVINGER, HOSS & PRUSSEN

F.O. AKINRELE & CO

FERRERE ABOGADOS

GERNANDT & DANIELSSON

GIDE LOYRETTE NOUEL AARPI

HANNES SNELLMAN

HENGELER MUELLER

KADIR, ANDRI & PARTNERS

KBH KAANUUN

KIM & CHANG

LENZ & STAEHELIN

LS HORIZON LIMITED

MATTOS FILHO ADVOGADOS

MAYORA & MAYORA, SC

MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS

MKONO & CO ADVOCATES

MORATIS PASSAS LAW FIRM

MOURANT OZANNES

MULLA & MULLA & CRAIGIE BLUNT & CAROE

NAGY ÉS TRÓCSÁNYI ÜGYVÉDI IRODA

NAUTADUTILH

PAKSOY

PELIFILIP SCA

PIMENTA DIONISIO E ASSOCIADOS

RUSSELL McVEAGH

SHALAKANY LAW OFFICE

SKUDRA & UDRIS

SLAUGHTER AND MAY

SYCIP SALAZAR HERNANDEZ & GATMAITAN

T STUDNICKI, K PŁESZKA, Z ĆWIĄKALSKI, J GÓRSKI SPK

URÍA MENÉNDEZ

VASIL KISIL & PARTNERS

VIEIRA DE ALMEIDA & ASSOCIADOS

WASELIUS & WIST

WEBBER WENTZEL

ZHONG LUN LAW FIRM

CONTENTS

Editor's Preface xi
Jan Putnis

Chapter 1 INTERNATIONAL INITIATIVES 1
Jan Putnis and Tolek Petch

Chapter 2 ANGOLA 34
Mafalda Oliveira Monteiro and Bruno Sampaio Santos

Chapter 3 AUSTRALIA.. 45
Louise McCoach and David Landy

Chapter 4 AUSTRIA 85
Wolfgang Freund

Chapter 5 BARBADOS 95
Trevor A Carmichael QC

Chapter 6 BELGIUM 104
Anne Fontaine

Chapter 7 BOLIVIA 115
Carlos Pinto-Meyer and Cristian Bustos

Chapter 8 BRAZIL 123
José Eduardo Carneiro Queiroz

Chapter 9 CAMBODIA 129
Bun Youdy

Chapter 10 CANADA 145
Scott Hyman, Carol Pennycook, Derek Vesey and Nicholas Williams

Chapter 11 CAYMAN ISLANDS.. 161
Richard de Basto

Chapter 12 CHINA 172
Wantao Yang and Borong Liu

Chapter 13 DENMARK 193
Mikkel Fritsch and Tanja Lind Melskens

Chapter 14 EGYPT 205
Aly El Shalakany

Chapter 15 EL SALVADOR 215
Oscar Samour and Aquiles Delgado

Chapter 16 EUROPEAN UNION 226
Jan Putnis and Michael Sholem

Chapter 17 FINLAND 250
Tarja Wist and Jussi Salo

Chapter 18 FRANCE 262
Olivier Saba, Samuel Pariente, Jennifer Downing, Jessica Chartier and Hubert Yu Zhang

Chapter 19 GERMANY 295
Thomas Paul and Sven H Schneider

Chapter 20 GREECE 309
Dimitris Passas and Vassilis Saliaris

Chapter 21 GUATEMALA 332
María Fernanda Morales Pellecer

Chapter 22 GUERNSEY 346
John Lewis and Helen Wyatt

Chapter 23 HONG KONG 358
Laurence Rudge and Peter Lake

Chapter 24 HUNGARY 376
Zoltán Varga and Tamás Pásztor

Chapter 25 INDIA 389
Shardul Thacker

Chapter 26 INDONESIA 403
Ferry P Madian and Yanny Meuthia S

Chapter 27 IRELAND 426
William Johnston, Robert Cain, Eoin O'Connor and Niall Esler

Chapter 28 ITALY 440
Giuseppe Rumi and Andrea Savigliano

Chapter 29 JAPAN 452
Hirohito Akagami and Wataru Ishii

Chapter 30 JERSEY 464
Simon Gould and Sarah Huelin

Chapter 31 KOREA 476
Sang Hwan Lee, Chan Moon Park and Hoin Lee

Chapter 32 KUWAIT 489
Haifa Khunji and Basem Al Muthafer

Chapter 33 LATVIA 503
Armands Skudra

Chapter 34 LUXEMBOURG 514
Franz Fayot

Chapter 35 MALAYSIA 534
Andri Aidham bin Dato' Ahmad Badri, Julian Mahmud Hashim and Tan Kong Yam

Chapter 36 MALTA 544
David Griscti and Clint Bennetti

Chapter 37 MOZAMBIQUE 555
Paulo Pimenta and João Leite

Chapter 38 NETHERLANDS 565
Joost Schutte, Annick Houben and Mariken van Loopik

Chapter 39 NEW ZEALAND 579
Guy Lethbridge and Debbie Booth

Chapter 40 NICARAGUA 592
Rodrigo Taboada R

Chapter 41 NIGERIA.. 605
Adamu M Usman and Jumoke Onigbogi

Chapter 42 NORWAY 620
Terje Sommer, Richard Sjøqvist and Markus Nilssen

Chapter 43 PHILIPPINES 632
Rafael A Morales

Chapter 44 POLAND 648
Tomasz Gizbert-Studnicki, Tomasz Spyra and Michał Bobrzyński

Chapter 45 PORTUGAL.. 662
Pedro Cassiano Santos

Chapter 46 ROMANIA.. 679
Alexandru Birsan, Carmen Peli and Alexandra Manciulea

Chapter 47 SOUTH AFRICA.. 692
Johan de Lange and Matthew Gibson

Chapter 48 SPAIN 704
Juan Carlos Machuca

Chapter 49 SWEDEN 732
Niclas Rockborn and Nils Unckel

Chapter 50 SWITZERLAND 750
Shelby R du Pasquier, Patrick Hünerwadel, Marcel Tranchet and Valérie Menoud

Chapter 51 TANZANIA.. 773
Wilbert B Kapinga, Rehema A Khalid and Kamanga W Kapinga

Chapter 52 THAILAND 783
Montien Bunjarnondha and Rahat Alikhan

Chapter 53 TURKEY 798
Serdar Paksoy and Nazlı Bezirci

Chapter 54 UKRAINE 810
Denis Lysenko and Yulia Kyrpa

Chapter 55 UNITED ARAB EMIRATES... 822
Amjad Ali Khan and Stuart Walker

Chapter 56 UNITED KINGDOM... 830
Jan Putnis, Benjamin Hammond and Nick Bonsall

Chapter 57 UNITED STATES 868
Luigi L De Ghenghi and Reena Agrawal Sahni

Chapter 58 VIETNAM 948
Samantha Campbell, Pham Bach Duong and Nguyen Thi Tinh Tam

Appendix 1 ABOUT THE AUTHORS.. 969

Appendix 2 CONTRIBUTING LAW FIRMS' CONTACT DETAILS.. 1007

EDITOR'S PREFACE

2012 may be remembered as the year when practical reality caught up with those who thought that the financial crisis that emerged in Western economies in 2007 would result in more effective cooperation between financial regulators across the world. By one measure – the number of new initiatives and proposals for reform – the amount of cross-border financial regulatory activism has never been higher. But by more useful measures – moves towards solutions to the 'too big to fail' problem through the development of effective cross-border resolution mechanisms for banking groups and international cooperation on reform of OTC derivatives regulation – the optimism of the past has faded a little.

Questions are increasingly asked about whether the obstacles to truly productive cross-border regulatory cooperation – political imperatives, different incentives and straightforward differences of view – will ever be surmounted in ways that make international banking groups fundamentally safer. Media speculation in January 2013 that US regulators might not allow banks to assume cross-border regulatory cooperation in the resolution plans that they prepare in 2013 would, if substantiated, highlight this trend.

These apparently negative developments have not made the period since the publication of the last edition of this book in April 2012 any less interesting. It is also worth noting that most of the challenges that we have seen – new law and regulation that creates difficult questions of cross-border consistency and extraterritoriality, differing regulatory philosophies between major financial jurisdictions and the sheer slowness and unpredictability of developments – have rational, if depressing, explanations. For example, fundamental differences between the insolvency law of major jurisdictions, coupled with cross-border recognition issues and disagreements over how to pay for resolution, are nothing if not formidable barriers to the development of workable group-wide resolution plans for banking groups.

However, the past 12 months have not been a period of complete failure of regulatory reform either. Progress has been made, for example, in the enactment of legislation regarding OTC derivatives, most notably the European Market Infrastructure

Regulation (EMIR) in the European Union. But, as noted above, cross-border cooperation in this area remains an issue: it seems that hardly a month goes by without the discovery of a previously unremarked-upon anomaly between the rules in this area in different countries.

Bank liquidity regulation has continued to be the subject of intense debate in 2012, culminating in the Basel Committee's announcement in January 2013 of its decision to relax and to recommend the gradual phasing in of the liquidity coverage ratio ('LCR') for banks. Taking into account the fundamental influence that the LCR will have on many banks' business models, this was a welcome sign of pragmatism and also a sign of the Basel Committee's willingness to move the debate on liquidity forward.

Despite the challenges that have arisen in bank resolution initiatives, legislation and rules are developing in this area in multiple jurisdictions, with, for example, the publication of the draft European Union Recovery and Resolution Directive ('the RRD') in June 2012.

The European Union is, at the time of writing, enjoying a period of respite from the problems that it faced from the eurozone crisis in 2012, but it would be very optimistic to say that those problems have been brought under control. The European Commission is placing much emphasis on finalising the legislation implementing Basel III (CRD IV) and the RRD as soon as possible in 2013, notwithstanding that each of these initiatives may ultimately be affected profoundly by the parallel 'banking union' proposals for the eurozone.

In the United States, the main rules implementing Basel III are also expected to be substantially finalised in 2013. The significance of the restructuring of the financial regulatory regime in the United States, principally under the rules that are emerging from the framework established by the Dodd-Frank Act, continues to unfold and looks set to dominate the careers of a generation of regulators, bankers and their advisers.

The realisation dawned on many banks in 2012 that regulatory reform will be a longer and more drawn-out process than had been anticipated. For this reason, 2012 may also be remembered as the year when the banking sector in Europe, the United States and some other parts of the world began to think seriously about structural change in the long term, accepting that restructuring will have to take place against a backdrop of continuing regulatory reform. We have begun to see more group reorganisations, disposals, and the severe downsizing or closure of some businesses in banking groups, as well as opportunistic acquisitions. Four principal factors have contributed to these developments:

a A little more certainty, or at least the perception of a little more certainty, about rule-making (or, at least, the direction of rule-making) when compared to the past.

b The continuing urgent need that many banking groups have for capital and liquidity, and the related need to ensure that capital is deployed in the most efficient and profitable ways.

c Some specific legal and regulatory initiatives driving structural change, such as the US Volcker Rule (although this rule has not yet been fully defined at the time of writing) and some emerging (though not yet in force) 'ring-fencing' proposals in parts of Europe (so far principally in the United Kingdom and France).

d Continuing regulatory attacks on complexity and actual or perceived barriers to resolution of banking groups.

Accordingly, many banks are refocusing their businesses (or are currently planning how to do so) on what they consider to be the areas that will yield the highest returns relative to cost in regulatory capital and liquidity terms. Consistent with that objective, we are seeing intense competition for capital allocation between different businesses within banking groups and a more widespread appreciation of the relative capital cost (or capital efficiency) of different activities.

2012 was of course also marked by further recrimination about past practices in parts of the banking sector. Allegations that LIBOR and other benchmarks have been manipulated (or subject to attempted manipulation), continuing losses from mis-selling and other past misconduct continue to affect the sector. Attention has turned more recently to the ways in which banking groups quantify and present these problems in their financial statements.

An increasingly orthodox view among senior management of banking groups in Europe and the United States is to conclude that the only way through these difficulties is to adopt a 'whiter than white' approach to compliance. This involves banks taking the initiative to present a new way forward on compliance matters and breaking away from the more reactive stance that some of them held in the past. Some commentators have asked where this will lead. Will it result in banking groups that are so hobbled and diminished by internal policies and rules that innovation, efficiency and, ultimately, service to the 'real' economy, is put at risk? Observation would suggest that this is a concern unless banks keep in mind four critical objectives when developing their compliance strategy and relationships with financial regulators:

Compliance

The first and most obvious objective is to ensure that banking groups are and remain compliant with their legal and regulatory obligations. In many countries this involves developing a good understanding of the purpose and spirit of those obligations in addition to (or, in some cases, instead of) their literal meaning.

Predictability

It is desirable to maximise the predictability of relationships with financial regulators. Good and constructive relationships with regulators generally make it more likely that banks will see what is coming around the corner sooner and will be better able to find positive ways to plan ahead.

Influence

Constructive influence of regulatory policy development in areas affecting banks is also desirable, even if a bank achieves no more than a small proportion of the change that it would like to see. For this purpose I would include within the meaning of 'influence' the conveying of cogent arguments even where regulators do not act in response to them. This is simply because the route to influence for a bank includes convincing regulators that it has thoughtful and coherent ideas, even where political or other imperatives have the result that the regulator does not address the bank's concerns.

Flexibility and pragmatism
Flexibility and pragmatism in the relationships between banks and their regulators is critical. Inflexibility can lead to inappropriate or overly formulaic regulatory approaches to unexpected developments. Flexibility is often difficult to achieve but is worth pursuing in the interests of both banks and regulators, through regular informal contacts and exchanges of views with senior staff at regulators in addition to formal interactions.

Obvious-looking these objectives may be, but serious problems in relationships between banks and their regulators can usually be traced back to a failure to achieve at least one of them.

This updated edition contains submissions by authors provided for the most part between mid-January and mid-February 2013, covering 56 countries (in addition to the chapters on International Initiatives and the European Union). As ever, comments on this book from banks, regulators and governments are welcome.

My thanks go to the contributors to this book, who have once again taken time out from advising on important matters affecting the banking sector to update their chapters – 'update' meaning a fundamental revision in many cases.

Thanks are also due to Adam Myers, Lydia Gerges and Gideon Roberton at Law Business Research Ltd, for their continuing support in the preparation of this book.

Finally, the list of credits would not be complete without mention of the partners and staff of Slaughter and May, in particular Ruth Fox, Ben Kingsley, Peter Lake, Laurence Rudge, Nick Bonsall, Ben Hammond, Tolek Petch and Michael Sholem. Once again, they helped not only to make this book possible but also to keep it as painless a project as is currently possible in the field of banking regulation.

Jan Putnis
Slaughter and May
London
March 2013

Chapter 43

PHILIPPINES

Rafael A Morales[1]

I INTRODUCTION

Banks in the Philippines are classified into (1) universal banks, (2) commercial banks, (3) thrift banks, (4) rural banks, (5) cooperative banks, (6) Islamic banks, (7) government-owned banks, and (8) other banks as may be classified by the Bangko Sentral ng Pilipinas ('BSP').[2] Universal and commercial banks are the dominant group, representing

1 Rafael A Morales is managing partner at SyCip Salazar Hernandez & Gatmaitan.

2 The BSP described the banks in items (1) to (5) above, in 'BSP Supervised Banks/Statistics' (www.bsp.gov.ph) as follows:

Universal and commercial banks represent the largest single group, resource-wise, of financial institutions in the country. They offer the widest variety of banking services among financial institutions. In addition to the function of an ordinary commercial bank, universal banks are also authorised to engage in underwriting and other functions of investment houses, and to invest in equities of non-allied undertakings.

The thrift banking system is composed of savings and mortgage banks, private development banks, stock savings and loan associations and microfinance thrift banks. Thrift banks are engaged in accumulating savings of depositors and investing them. They also provide short-term working capital and medium and long-term financing to businesses engaged in agriculture, services, industry and housing, and diversified financial and allied services, and to their chosen markets and constituencies, especially small and medium-sized enterprises and individuals.

Rural and cooperative banks are the more popular type of banks in the rural communities. Their role is to promote and expand the rural economy in an orderly and effective manner by providing the people in the rural communities with basic financial services. Rural and cooperative banks help farmers through the stages of production, from buying seedlings to marketing their produce. Rural banks and cooperative banks are differentiated from each other

approximately 70 per cent of the resources of the banking system.[3] Under the General Banking Law of 2000 ('GBL'), a universal bank is defined as a commercial bank with the additional authority to exercise the powers of an investment house and invest in non-allied enterprises.[4] An ordinary commercial bank does not have that authority.

There are branches, as well as subsidiaries or affiliates, of foreign banks in the Philippines that are licensed either as universal or commercial banks. Others have offshore banking units with more limited functions.[5]

The BSP, which is the Philippine central bank, acting through its Monetary Board, is mandated by law to ensure that the control of 70 per cent of the resources or assets of the banking system is held by domestic banks that are at least majority-owned by Philippine nationals.[6]

II THE REGULATORY REGIME APPLICABLE TO BANKS

The GBL governs universal and commercial banking. Special laws or charters regulate the operations of the other banks,[7] but the GBL still applies to them insofar as it is not in conflict with those laws or charters. In fact, the Philippine Cooperative Code of 2008 recognises the primacy of the GBL in the regulation of cooperative banks.[8]

The rules implementing the various banking laws are embodied in the Manual of Regulations for Banks issued by the BSP. From time to time, additional circulars and

by ownership. While rural banks are privately owned and managed, cooperative banks are organised/owned by cooperatives or federation of cooperatives.

With regard to point (6), the BSP recognises as an Islamic bank the Al-Amanah Islamic Investment Bank of the Philippines (see BSP Circular-Letter dated 14 September 2001). The government-owned banks referred to in point (7) are the Development Bank of the Philippines and the Land Bank of the Philippines.

3 The five largest privately owned universal banks in terms of assets (Banco de Oro Unibank Inc, Metropolitan Bank and Trust Company, Bank of the Philippine Islands, Rizal Commercial Banking Corporation and Philippine National Bank), as well as their subsidiaries that are thrift banks, account for approximately 50.2 per cent of the resources of the banking system. See Nestor A Espenilla Jr, 'Financial Regulation and the Central Bank' in *Central Banking in Challenging Times: The Philippine Experience* (BSP: 2009), p. 469.

4 Section 23 of the GBL (Republic Act No. 8791).

5 See Sections 45 to 60 of the BSP Manual of Regulations on Foreign Exchange Transactions.

6 Section 3 of Republic Act No. 7721.

7 These special laws or charters are the Thrift Banks Act (Republic Act No. 7906), the Rural Banks Act (Republic Act No. 7353), the Philippine Cooperative Code of 2008 (Republic Act No. 9520), the Charter of the Al-Amanah Islamic Investment Bank of the Philippines (Republic Act No. 6848), the 1986 Revised Charter of the Development Bank of the Philippines (Executive Order No. 81), and the Charter of the Land Bank of the Philippines (Republic Act No. 3844, as amended).

8 Article 104 of the Philippine Cooperative Code of 2008.

other issuances are promulgated by the BSP to regulate new matters, if not to amend, repeal or otherwise modify existing rules.

The New Central Bank Act (Republic Act No. 7653), which is the BSP charter, is applicable as it contains provisions on banking regulation in line with the mandate of the BSP as the primary overseer of banks in the Philippines. Relevant too is the charter of the Philippine Deposit Insurance Corporation ('PDIC'),[9] the insurer of bank deposits.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Behind and central to a safe and sound banking system is an effective prudential regulator. In the Philippines that role is fulfilled completely by the BSP. Section 4 of the GBL expressly states that the 'operations and activities of banks shall be subject to supervision of the Bangko Sentral'. Supervision, as defined in Section 4, not only contemplates the promulgation by the BSP of rules of conduct and standards of operations for banks (now set out in the Manual of Regulations for Banks, as supplemented or modified by the BSP from time to time), but also visitorial powers, that is, the conduct of examination and investigation of the activities of banks with a view to determining their compliance with those rules and standards, and enforcing prompt and corrective action in case of breach of the same. Ultimately, the aim is to ensure the continued solvency and liquidity of banks.

As a rule, the BSP conducts regular investigation of banks not more than once a year. However, the Monetary Board, by an affirmative vote of five members, may order a special examination of a bank.[10] In this regard, the BSP is required to immediately address findings of irregularities or deficiencies. When examining a bank, the BSP also has the authority to examine an enterprise that is wholly or majority-owned by such bank.[11]

Under the PDIC Charter, the PDIC can also examine banks once a year, with the prior approval of the BSP. To avoid overlapping of efforts, the PDIC has to 'maximize the efficient use of relevant reports, information and findings of the Bangko Sentral which it shall make available to the [PDIC]'.[12]

ii Management of banks

The management of a locally incorporated bank (such as a subsidiary of a foreign bank) is vested in a board of directors with five to 15 members, at least two of whom must be independent directors. Foreign nationals may become directors to the extent of the foreign equity in the bank concerned.[13]

9 Republic Act No. 3591, as amended.

10 Section 28 of the New Central Bank Act.

11 Section 7 of the GBL.

12 Section 8 (Paragraph 8) of the PDIC Charter.

13 Section 15 of the GBL.

The Monetary Board has prescribed the criteria of individuals to be elected as bank directors, in line with the fit-and-proper rule, to maintain the quality of bank management and better protect the depositors and the public in general. Here, the Monetary Board considers the integrity, experience, education, training and competence of the individual concerned. The election of bank directors will have to be confirmed by the Monetary Board.[14]

Board meetings may be conducted through teleconferencing or video-conferencing.[15] Accordingly, directors of a bank need not be all physically present in one room to hold a valid meeting. A bank director must, however, participate in at least 50 per cent of all board meetings every year and physically attend at least 25 per cent of all such meetings.[16]

As in other domestic corporations, all corporate powers of a locally incorporated bank are exercised by its board of directors.[17] After the election of the directors, the shareholders can participate in the management of the bank only in certain fundamental matters such as the amendment of the articles of incorporation or by-laws of the bank, its dissolution, or its merger or consolidation with another bank.[18]

The BSP published the Handbook on Corporate Governance 'to improve corporate governance in the Philippine banking system'. The BSP also issued the rules of procedure on administrative cases involving directors and officers of banks.[19] It is also aligning its rules with international best practices that foster good corporate governance in the banking sector, such as the Principles for Enhancing Corporate Governance promulgated by the Basel Committee on Banking Supervision.[20] In this regard, the BSP has required each bank to appoint a full-time chief compliance officer to manage a compliance system designed to identify and mitigate business risks that may erode the franchise value of such bank.[21]

14 A bank director must have the following minimum qualifications prescribed by the Monetary Board: he or she must be at least 25 years old at the time of his or her election, and must be at least a university graduate, or have at least five years' experience in business, or have undergone banking training satisfactory to the BSP (Subsection X141.2 of the Manual of Regulations for Banks). For additional qualifications or disqualifications prescribed, from time to time, by the Monetary Board, see Section X141 et seq. of the Manual of Regulations for Banks, as well as the BSP Supervision and Examination Sector's 'Basic Guidelines in Establishing Banks' (see also Appendix 37 to the Manual of Regulations for Banks). The Monetary Board has to confirm the election or appointment of directors, as well as officers with the rank of senior vice president and above, of universal and commercial banks (Subsection X143.5, Manual of Regulations for Banks, as amended by BSP Circular No. 391 dated 15 July 2003).

15 Section 15 of the GBL.

16 Subsection X141.1 of the Manual of Regulations for Banks.

17 Section 23 of the Corporation Code of the Philippines.

18 See Sections 16, 48, 77, 118 and 119 of the Corporation Code of the Philippines.

19 BSP Circular No. 477.

20 BSP Circular No. 757.

21 BSP Circular No. 747.

To protect the funds of the depositors and creditors of banks, the Monetary Board may regulate the payment of compensation, allowances, fees, bonuses, stock options, profit-sharing and fringe benefits to bank directors and officers, in exceptional cases and when circumstances warrant, such as when the bank is under comptrollership or conservatorship; when it is found to be conducting business in an unsafe and unsound manner; or when it is in an unsatisfactory financial condition.[22] Towards this end, the Monetary Board requires that the total amount of unbooked valuation reserves and deferred charges be deducted from the net income of the bank, in case of profit-sharing.[23] Further, when the total compensation package (including salaries, allowances, fees and bonuses) of directors and officers is significantly excessive when compared with peer group averages, the Monetary Board may order the reduction of the package to a more reasonable level.[24] It must also be noted that the compensation of directors in general is regulated by Section 30 of the Corporation Code, which mandates that the total yearly compensation of directors must not exceed 10 per cent of the net income before tax during the preceding year.

Philippine branches of foreign banks are bound by the pertinent provisions of the GBL and the Manual of Regulations for Banks, except those providing for (1) the creation, formation, organisation or dissolution of corporations; and (2) the fixing of the relations, liabilities, responsibilities or duties of shareholders, directors or officers of corporations.[25] These excluded matters will be governed by the applicable law in the jurisdiction of the foreign bank. Outside of items (1) and (2), branches of foreign banks are required to conduct their operations subject to the same standards required of domestic banks. A branch does not have a board of directors. It is usually managed by an individual appointed by the head office and his or her authority is normally set out in a power of attorney from the head office.

iii Regulatory capital and liquidity

Section 34 of the GBL enjoins the BSP to conform the 'minimum ratio which the net worth of a bank must bear to its total risk assets' to 'internationally accepted standards, including those of the Bank of International Settlements (BIS) relating to risk-based capital requirements'. Basically, the guidelines issued by the BSP to implement Section 34 follow Basel II.[26] The daily risk-based capital ratio of a bank, expressed as a percentage of qualifying capital to risk-weighted assets, must not be less than 10 per cent for both solo basis (i.e., head office plus branches) and consolidated basis (i.e., parent bank plus subsidiary financial allied enterprises, excluding insurance company). The 'qualifying capital' is the sum of Tier I (core) capital and Tier II (supplementary) capital, less required deductions. In turn, Tier II capital is the sum of upper Tier II capital and lower Tier II capital, net of required deductions. Hybrid Tier I capital, such as perpetual preferred

22 Section 18 of the GBL.

23 Section X147 of the Manual of Regulations for Banks.

24 Ibid.

25 Section 77 of the GBL.

26 BSP Circulars No. 280 and 538.

stock and perpetual unsecured subordinated debt issuances of a bank, is allowed provided certain minimum requirements are met. It must be noted that the above 10 per cent ratio is more stringent than the Basel II capital adequacy ratio of only 8 per cent.

In case of non-compliance by a bank with the prescribed minimum ratio, the Monetary Board may, until that ratio is met or restored by such bank, limit or prohibit the distribution of net profits by such bank, and require that such profits be used, in full or in part, to increase the capital accounts of such bank; restrict or prohibit the acquisition of major assets by such bank; and restrict or prohibit the making of new investments by such bank, with the exception of purchases of readily marketable evidence of indebtedness of the Philippine government and the BSP, and other evidence of indebtedness or obligations the servicing and the repayment of which are fully guaranteed by the Philippine government.[27]

The BSP announced that universal and commercial banks will be required to adopt the capital adequacy standards under Basel III starting 1 January 2014. The Basel Committee on Banking Supervision outlined a staggered implementation of Basel III up to the end of 2018 to allow internationally active banks time to raise capital organically. However, the BSP decided to adopt Basel III-based capital standards in full by 2014 on a non-staggered basis. This is in recognition of the strong capital position of the Philippine banking industry.[28]

iv Recovery and resolution

Under Section 29 of the New Central Bank Act, the Monetary Board may appoint a conservator for a bank that is in a 'state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors'. The conservator will have such powers as the Monetary Board deems necessary to take charge of the asset and liabilities of the bank; manage it or reorganise its management; collect all monies and debts due to it; and exercise all powers necessary to restore its viability. The conservator must be competent and knowledgeable in bank operations and management. There is a one-year limit to conservatorship.[29]

The Monetary Board will terminate the conservatorship when the bank can continue to operate on its own. Termination is also an option if the Monetary Board determines that the continuance in business of the bank would involve probable loss to the depositors and other creditors of the bank, in which case Section 30 of the New Central Bank would apply.[30]

Under Section 30, the Monetary Board may summarily forbid a bank from doing business and designate the PDIC as a receiver of such bank if such bank 'has insufficient realisable assets, as determined by the Bangko Sentral, to meet its liabilities'. The appointment of a receiver is also warranted without prior hearing, in the event the

27 Section 34 of the GBL.

28 See 'BSP to Fully Implement Basel 3 Capital Adequacy Rules for Universal and Commercial Banks in 2014' (BSP Media Release, 6 January 2012), www.bsp.gov.ph.

29 Section 29 of the New Central Bank Act.

30 Ibid.

Monetary Board finds that a bank is unable to pay its liabilities as they become due in the ordinary course of business; cannot continue in business without involving probable losses to its depositors or creditors; or has wilfully violated a final BSP cease-and-desist order involving acts or transactions that amount to fraud or dissipation of bank assets.[31]

The receiver must determine, as soon as possible but not later than 90 days from takeover, whether the bank may be rehabilitated or otherwise placed in a condition that would permit it to resume business with safety to its depositors and other creditors, and the general public. Any such determination for the resumption of business is subject to prior Monetary Board approval. In case the receiver determines that the bank cannot be rehabilitated or permitted to resume business, the Monetary Board will notify the board of directors of the bank accordingly, and instruct the receiver to liquidate the bank. The receiver will then file an *ex parte* petition in court for assistance in the liquidation of the bank pursuant to a liquidation plan adopted by the PDIC for general application to all closed banks and convert the assets of the bank to money, disposing of the same to creditors and other parties, for the purpose of paying the debts of the bank in accordance with the rules on concurrence and preference of credits under the Civil Code of the Philippines, and institute actions to collect and recover accounts and assets of, or defend any action against, the bank.[32]

The actions of the Monetary Board taken under Section 30 of the New Central Bank Act are final and executory, and may not be restrained or set aside by a court, save on petition for *certiorari* on the ground that the action in question was in excess of jurisdiction or done with grave abuse of discretion as to amount to lack or excess of jurisdiction.[33]

IV CONDUCT OF BUSINESS

Section 2 of the GBL requires banks to exercise 'high standards of integrity and performance'. A breach of this fiduciary duty could make the erring bank liable for damages to its customers, as well as result in the conduct of banking business in an unsafe and unsound manner that may lead to a bank run and eventual insolvency. To minimise this systemic risk, prudential measures have been put in place in the GBL and the Manual of Regulations for Banks. Apart from capital adequacy discussed earlier, some of these measures include the reserve requirement, single borrower's limit, the directors, officers, stockholders and related interests ('DOSRI') limit, loan-loss provisioning, and equity investment limit.

i Reserves

Banks are required to maintain reserves against their deposit and deposit-substitute liabilities.[34] The reserve requirements are not static, as they may be varied, from time

31 Section 30 of the New Central Bank Act.

32 Ibid.

33 Ibid.

34 Section 94 of the New Central Bank Act.

to time, by the Monetary Board. At present, the BSP imposes a unified reserve of 18 per cent for the deposit and deposit-substitute liabilities of universal and commercial banks.[35] These reserves, aside from being an instrument of monetary policy of the BSP, have a prudential purpose since they serve as a ready source of funds that will respond to an unusually large number of withdrawals of deposits taking the shape of a bank run. Under manageable circumstances, the reserves and other funds at the bank's disposal should stem the run.

ii Single borrower's limit

The single borrower's limit ('SBL') serves to allocate bank resources to different sectors of the economy. It prevents the bank from making excessive loans and other credit accommodations to a single borrower or corporate group. Thus, the bank is prohibited from placing all of its eggs in the basket of a single client, thereby safeguarding the bank from too large a risk exposure to a single client. Currently, the SBL is 25 per cent of the net worth of the bank.[36] There could be an incremental SBL of 10 per cent of the net worth of the bank, provided that the additional liabilities of the borrower are adequately secured by documents of title to goods that are readily marketable, non-perishable, and fully insured.[37]

iii DOSRI limit

The general policy behind the DOSRI limit is to level the lending field between insiders (namely, directors, officers, stockholders, and their related interests) and the outsiders. The rules require that loans and other credit accommodations to DOSRI are to be in the regular course of business and upon terms not less favourable to the bank than those offered to those outside the DOSRI circle. The aim is to prevent the bank from becoming a captive source of finance of the DOSRI.[38]

The existing DOSRI rules have three ceilings: an individual ceiling, an aggregate ceiling, and a ceiling on unsecured loans. The individual ceiling relates to the total allowable outstanding direct credit accommodation to a DOSRI, which is an amount equivalent to his or her unencumbered deposits in the lending bank plus the book value of paid-capital contribution therein. It is also required that the unsecured credit accommodations must not exceed 30 per cent of the total DOSRI credit accommodations. On the other hand, the aggregate ceiling refers to the total credit accommodations to DOSRI. This is 15 per cent of the total loan portfolio of the bank or 100 per cent of its net worth, whichever is lower.[39]

Before a bank can extend a DOSRI loan, there must be specific resolution that must be passed by the board of directors, without the participation of the interested

---

35 BSP Circular No. 753.

36 Section X303 of the Manual of Regulations for Banks.

37 Subsection 35.2 of the GBL.

38 Section 36 of the GBL.

39 Sections X326 to X337 of the Manual of Regulations for Banks.

director. The resolution must be entered upon the records of the bank and a copy of the entry must be transmitted to the BSP within 20 banking days of board approval.

iv Loan-loss provisioning

Pursuant to Subsection X302.1 of the Manual of Regulations for Banks, banks are required to set up a general provision for loan losses: 5 per cent of the outstanding balance of unclassified restructured loans less the outstanding balance of restructured loans that are considered non-risk items, and 1 per cent of the outstanding balance of unclassified loans other than restructured loans less loans that are non-risk items. Further, an allowance for probable losses on the loan accounts and other risk assets is to be set up: 5 per cent for loans especially mentioned, 10 per cent for secured but substandard loans, 25 per cent for unsecured substandard loans, 50 per cent for doubtful loans, and 100 per cent for lost loans.[40]

v Equity investment limit

There are limits as to how much universal and commercial banks can invest in equities of enterprises. Under Section 24 of the GBL, the total investment by a universal bank in equities of allied and non-allied enterprises must not exceed 25 per cent of its net worth, while its equity investment in any one enterprise is not to exceed 25 per cent of its net worth.[41] On the other hand, the total investment by a commercial bank in equities of

40 Under BSP Circular No. 247 (2 June 2000), 'unclassified loans' are defined as 'loans that do not have a greater-than-normal risk and do not possess the characteristics of classified loans'. 'Classified loans' are subdivided into (1) loans especially mentioned; (2) substandard; (3) doubtful; and (4) loss. 'Loans especially mentioned' have potential weaknesses that, if left uncorrected, may affect the repayment of the loans and thereby increase the credit risk to the bank. This category includes, for example, loans without credit investigation report, loans secured by collaterals that have declined in value, and loans past due for more than 30 days up to 90 days. If a loan becomes past due for more than 90 days, it will be classified as 'substandard'. This category also includes, *inter alia*, loans under litigation. 'Doubtful' accounts would include, for instance, loans previously classified by BSP examiners as 'substandard' but without at least 20 per cent repayment of principal during the 12-month period following such classification. A loan is also categorised as 'doubtful' when it is past due and there is an adverse claim over the real estate securing such loan, rendering the foreclosure of the mortgage uncertain. Finally, the 'loss' category would refer to 'loans or portions thereof which are considered uncollectible or worthless and of such little value that their continuance as bankable assets is not warranted although the loans may have some recovery or salvage value'. An example of this type is a past due clean loan the interest of which is unpaid for a period of six months. The aim of all of this is to flush out the bad loans and have them properly classified and provisioned.

41 Section X377 of the Manual of Regulations for Banks (as amended by BSP Circular No. 316 dated 29 January 2002) lists the following as possible financial allied enterprises of a universal bank: (a) leasing companies, (b) banks, (c) investment houses, (d) financing companies, (e) credit card companies, (f) financial institutions catering to small and medium-sized industries, including venture capital corporations, (g) companies engaged in stock brokerage or securities

allied enterprises must not exceed 35 per cent of its net worth while the individual limit is also 25 per cent of its net worth. It must be stressed that only universal banks can invest in non-allied enterprises. In all cases, the approval of the Monetary Board is required.

A breach of any of the foregoing prudential measures would constitute a violation of the GBL or the Manual of Regulations for Banks. Under Section 36 of the New Central Bank Act, any person responsible for such breach or violation may be criminally prosecuted and, if convicted, may be punished by a fine ranging from 50,000 pesos to 200,000 pesos or imprisonment for the responsible bank personnel of not less than two years but not more than 10 years, or a combination of fine and imprisonment, at the discretion of the court. Further, whenever a bank persists in carrying on its business in an unlawful or unsafe manner, the Monetary Board may take action under Section 30 of the New Central Bank Act for its receivership and liquidation, without prejudice to the

---

dealership, (h) companies engaged in foreign exchange dealership or brokerage, (i) insurance companies, and (j) holding companies investing in allied or non-allied enterprises.

As clarified by BSP Circular No. 316, point (a) includes enterprises engaged in the 'leasing of stalls and spaces in a commercial establishment'. However, the bank's entry into these leasing enterprises should be through 'conversion of outstanding loan obligations into equity'.

On the other hand, Section X380 of the Manual (as amended by BSP Circular No. 317 dated 29 January 2002, and BSP Circular No. 338 dated 18 July 2002) classifies the following enterprises as 'non-financial allied': (a) warehousing companies; (b) storage companies; (c) safe deposit box companies; (d) companies primarily engaged in the management of mutual funds but not in mutual funds themselves; (e) management corporations engaged in an activity similar to the management of mutual funds; (f) companies engaged in providing computer services; (g) insurance agencies or brokerages; (h) companies engaged in house building and home development; (i) companies providing drying or milling facilities for agricultural crops; (j) service bureaus organised to perform for banks and non-bank financial institutions the services allowed to be outsourced under BSP Circular No. 268 dated 5 December 2000; (k) Philippine Clearing House Corporation; and (l) Philippine Central Depository, Inc; and (m) Fixed Income Exchange (i.e., Philippine Dealing & Exchange Corp). Health maintenance organisations are also classified as non-financial allied enterprises in which universal banks may invest.

All enterprises not otherwise specified as allied (whether financial or non-financial) would be classifiable as non-allied ones. Thus, investments in mutual funds (as opposed to their management companies) would be considered as non-allied. In addition, Subsection 1381.1 of the Manual identifies the following as non-allied enterprises: (1) enterprises engaged in physically productive activities in agriculture, mining and quarrying, manufacturing, public utilities, construction, wholesale trade, and community and social services following the industrial groupings in the Philippine Standard Industrial Classification as enumerated in Appendix 22 of the Manual; (2) industrial park projects or industrial estate developments; and (3) financial and commercial complex projects (including land development and buildings constructed thereon) arising from or in connection with the government's privatisation programme. An airport terminal company is a non-allied enterprise (see *Agan, Jr, v. Philippine International Air Terminals Co, Inc*, 402 SCRA 612, 651–652 (2003); see also *Agan, Jr, v. Phlippine International Air Terminal Co, Inc*, G.R. No. 155001, 21 January 2004).

penalties provided above and the administrative sanctions provided in Section 37 of the New Central Bank Act, namely:

a fines in amounts determined by the Monetary Board but in no case to exceed 30,000 pesos a day for each violation;
b suspension of rediscounting privileges or access to BSP credit facilities;
c suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;
d suspension of interbank clearing privileges; and
e revocation of quasi-banking licence.

The bank is subject to certain confidentiality obligation. Any information relating to the funds or properties of clients of a bank are to be kept confidential by such bank and its directors, officers, employees or agents. Under Subsection 55.1(b) of the GBL, such information cannot be disclosed to any unauthorised person without a court order. However, under Section 11 of the Anti-Money Laundering Act of 2001 (Republic Act No. 9160, as amended), no court order is required if:

a the funds or property involved consists of investments (other than those in bonds issued by the Philippine government or its political subdivisions and instrumentalities, as those are governed by the Secrecy of Bank Deposits Law mentioned below); and
b the said investments are related to:
 - kidnapping for ransom;
 - unlawful activities under Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15 and 16 of the Comprehensive Dangerous Act of 2002;
 - hijacking and other violations under Republic Act No. 6235; and
 - destructive arson and murder, including those perpetrated by terrorists against non-combatants and similar targets.

The term 'unauthorised person' in Subsection 55.1(b) of the GBL does not include BSP officials involved in the periodic or special examination of the bank, or other persons authorised by the bank to undertake certain activities on its behalf (e.g., a service provider under an outsourcing arrangement allowed under Subsection 55.1(e) of the GBL). It must also be noted that the persons entitled to protection under Subsection 55.1(b) are 'private individuals, corporations, or any other entity'. Thus, the protection would not extend to non-private persons, such as public officials.

With regard to bank deposits in pesos (as well as investments in bonds issued by the Philippine government or its political subdivisions and instrumentalities), the Secrecy of Bank Deposits Law (Republic Act No. 1405, as amended) applies. Under this law, those deposits and investments may not be examined, inquired, or looked into by any person, government official, bureau or office, except:

a upon written permission of the depositor or investor;
b in cases of impeachment; or
c upon order of a competent court regarding:
 - bribery;
 - dereliction of duty of public officials; or
 - where the money deposited or invested is the subject of the litigation.

The following cases are additional exceptions to the Secrecy of Bank Deposits Law:

a prosecution for unexplained wealth under Republic Act No. 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act (*Philippine National Bank v. Gancayco*, 15 SCRA 91 (1965); *Banco Filipino Savings and Mortgage Bank v. Purisima*, 161 SCRA 576 (1988));

b upon order of a competent court in cases of violation of the Anti-Money Laundering Act of 2001, when it has been established that there is probable cause that the deposits or investments involved are in any way related to an unlawful activity or a money laundering offence under the said Act, except that no court order is required in:
- kidnapping for ransom;
- unlawful activities under Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15 and 16 of the Comprehensive Dangerous Drugs Act of 2002;
- hijacking and other violations under Republic Act No. 6235; and
- destructive arson and murder, including those perpetrated by terrorists against non-combatants and similar targets (Section 11, Anti-Money Laundering Act of 2001);

c BSP's inquiry into or examination of deposits or investments with any bank, when the inquiry or examination is made in the course of the BSP's periodic or special examination of such bank (Section 11, Anti-Money Laundering Act of 2001);

d inquiry by the commissioner of internal revenue into the deposits of a decedent for the purpose of determining the gross estate of such decedent (Section 6(F), National Internal Revenue Code of 1997 (Republic Act No. 8424)); and

e disclosure of certain information about bank deposits, which have been dormant for at least 10 years, to the Treasurer of the Philippines in a sworn statement, a copy of which is posted in the bank premises (Section 2, Unclaimed Balances Law (Act No. 3936, as amended)).

On the other hand, deposits in Foreign Currency Deposit Units of banks may be examined in any of the following instances:

a upon the written permission of the depositor (Section 8, Foreign Currency Deposit Act);

b upon order of a competent court in cases of violation of the Anti-Money Laundering Act of 2001, when it has been established that there is probable cause that the deposits involved are in any way related to an unlawful activity or a money laundering offence under the said Act, except that no court order is required in:
- kidnapping for ransom;
- unlawful activities under Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15 and 16 of the Comprehensive Dangerous Drugs Act of 2002;
- hijacking and other violations under Republic Act No. 6235; and

- destructive arson and murder, including those perpetrated by terrorists against non-combatants and similar targets (Section 11, Anti-Money Laundering Act of 2001);

c inquiry by the commissioner of internal revenue into the deposits of a decedent for the purpose of determining the gross estate of such decedent (Section 6(F), National Internal Revenue Code of 1977); and

d BSP's inquiry or into or examination of deposits with any bank, when the inquiry or examination is made in the course of the BSP's periodic or special examination of such bank (Section 11, Anti-Money Laundering Law of 2001).

Notwithstanding the provisions of the Secrecy of Bank Deposits Law, the Foreign Currency Deposit Act and Subsection 55.1(b) of the GBL, the BSP and the PDIC may enquire into or examine deposit accounts and all information related thereto in case there is a finding of unsafe or unsound banking practice.[42]

Further, under the Terrorism Financing Prevention and Suppression Act 2012, the Anti-Money Laundering Council is authorised, in connection with an investigation of financing of terrorism, to enquire into or examine deposits and investments with any bank and any of its subsidiaries or affiliates, without a court order.[43]

V FUNDING

Funding for banks come from equity contribution from its shareholders and from loans and credit accommodations from the BSP and other lenders.[44]

The BSP has prescribed certain minimum levels of capitalisation for banks. For instance, a universal bank must have a minimum paid-in capital of 4.95 billion pesos at the time of its establishment, while that of a commercial bank is 2.4 billion pesos.[45] Furthermore, the risk-based capital adequacy ratio of universal and commercial banks has continued to be above the BSP's minimum ratio of 10 per cent and the Basel Accord's standard ratio of 8 per cent, despite global financial uncertainties.[46]

The BSP, for its part, provides rediscounting and other credit facilities to banks, including loans for liquidity purposes and emergency loans in periods of financial panic that directly threatens monetary and banking stability.[47]

42 Section 8 (Paragraph 8) of the PDIC Charter, as amended by Republic Act No. 9576.

43 Section 10 of the Republic Act No. 10168.

44 Banks have raised Basel-based capital through subordinated debt issuances.

45 BSP Circular No. 257.

46 See 'U/KB Banking Industry CARs Continue to Persist Above 10 Percent' (BSP Media Release, 3 December 2012), www.bsp.gov.ph.

47 Sections 81 to 88 of the New Central Bank Act.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Under Subsection X126.1 of the Manual of Regulations for Banks (as amended by BSP Circular No. 718), the shareholdings of an individual or a corporation in any bank are subject to the following limits:

a foreign individuals and non-bank corporation may collectively own or control up to 40 per cent of the voting stock of a domestic bank;

b qualified foreign banks[48] may own or control up to 60 per cent of the voting stock of a domestic bank, provided that their shareholdings, when added to those owned or controlled by foreign individuals and non-bank corporations, will not exceed 60 per cent of the voting stock of a domestic bank established under Republic Act No. 7721;[49]

c a Filipino individual and a domestic non-bank corporation may each own up to 40 per cent of the voting stock of a domestic bank, but there is no ceiling on the aggregate ownership by such individuals and corporations in a domestic bank;

d an individual and corporations wholly or majority-owned by him or her can own or control only up to a combined 40 per cent of the voting stock of a domestic bank; and

e no foreign equity is permitted in a rural bank.

ii Transfers of banking business

The prior approval of the Monetary Board is required for transactions involving voting shares of a bank, if they will:

a result in ownership or control of more than 20 per cent of voting shares of stock of a bank by any person (whether natural or juridical) or which will enable such person to elect, or be elected as, a director of such bank; or

b effect a change in the majority ownership or control of the voting shares of stock of the bank from one group of persons to another group.

---

48 Under Republic Act No. 7721 (An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines), the BSP considers only those among the top 150 foreign banks in the world or the top five banks in their country of origin. Further, the BSP will '(i) ensure geographic representation and complementation; (ii) consider strategic trade and investment relationships between the Philippines and the trade and investment relationships between the Philippines and the country of incorporation of the foreign bank; (iii) study the demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant; (iv) see to it that reciprocity rights are enjoyed by Philippine banks in the applicant's country; and (v) consider willingness to fully share their technology'.

49 The percentage of foreign-owned voting stock in a domestic bank will be determined by the citizenship of the individual shareholders in that bank.

The transaction will not be approved by the Monetary Board, unless the bank concerned will immediately comply with the prescribed minimum capital requirement for new banks.[50]

Monetary Board and PDIC approvals are also required for bank mergers or consolidations.[51] Further, without PDIC consent, no insured bank can assume another bank's liability to pay deposits.[52]

VII THE YEAR IN REVIEW

The Philippine banking system remained sound and stable in 2012, as it continued to experience solid asset growth and keep its capitalisation above international and BSP standards.[53]

Notwithstanding the changeable financial circumstances in 2012, the BSP kept inflation within the target range of 3 to 5 per cent, which allowed the BSP to keep interest rates at low levels.[54] At the end of 2012, the gross international reserves stood at US$84.2 billion, US$8.9 billion (or 11.8 per cent) higher compared with the end-December 2011 figure.[55]

In the first three quarters of 2012 the economy posted a 6.5 per cent growth.[56] Foreign direct investment for the first 10 months of 2012 was higher by 32.6 per cent than that posted in the comparable period in 2011.[57] Furthermore, the Philippines extended a US$1 billion loan to the International Monetary Fund for the purpose of assisting other nations burdened with financial problems.[58] All this resulted in favourable credit ratings given to the Philippines by Fitch Ratings, Standard & Poor's, and Moody's Investors Service.[59]

---

50 Subsection X126.2 of the Manual of Regulations for Banks.

51 Subsection X108.1 of the Manual of Regulations for Banks; Section 21(c) of the PDIC Charter.

52 Section 21(c) of the PDIC Charter.

53 See 'Speech of the BSP Governor during the Rotary Club of Manila's First Membership Meeting for 2013' (Speeches, 3 January 2013), www.bsp.gov.ph.

54 Ibid.

55 See 'End-2012 GIR Level Rises to US$84.2 Billion' (BSP Media Release, 7 January 2013), www.bsp.gov.ph.

56 *Supra*, note 53.

57 See 'Net Inflows of Foreign Direct Investments Continue in First Ten Months of 2012' (BSP Media Release, 10 January 2013), www.bsp.gov.ph.

58 See 'Statement from BSP Governor Amando M Tetangco, Jr on the $1 billion loan extended by the Philippines to the IMF' (BSP Media Release, 25 June 2012), www.bsp.gov.ph.

59 *Supra*, note 57.

VIII OUTLOOK AND CONCLUSIONS

The outlook for the Philippine banking system remains positive, as the economy continues to grow and be resilient amid the financial crisis in the eurozone and the 'fiscal cliff' issue in the United States.

The targeted adoption by 1 January 2014 of Basel III capital adequacy standards for universal and commercial banks[60] would place the Philippines alongside China, Australia, Hong Kong and Singapore in terms of Basel III implementation.

The BSP will continue to promote microfinancing in line with its programme to provide access to financial services to all. In fact, the Economist Intelligence Unit Global Microfinance cited the Philippines as the best in the world for its regulatory framework for microfinance.[61]

Finally, the merger and consolidation of banks will continue to be encouraged by the BSP to further strengthen the banking sector. In this respect, the BSP issued Circular No. 776 on 7 December 2012, granting temporary rediscounting lines to newly merged or consolidated banks. This is in addition to the general incentives and relief granted to them under BSP Circular No. 771.

60 See ' BSP Issues the Basel III Implementing Guidelines' (BSP Media Release, 26 December 2012), www.bsp.gov.ph.

61 See '2011 Year End Report on BSP Financial Inclusion Initiatives' posted in www.bsp.gov.ph.

Appendix 1

ABOUT THE AUTHORS

RAFAEL A MORALES

SyCip Salazar Hernandez & Gatmaitan

Rafael A Morales is the managing partner at SyCip Salazar Hernandez & Gatmaitan, the largest law firm in the Philippines, and before that was the head of its banking, finance and securities department.

He is a professorial lecturer at the College of Law of the University of the Philippines, as well as the author of two books (*The Philippine General Banking Law (Annotated)* and *The Philippine Securities Regulation Code (Annotated)*) and numerous legal articles. Among his many recognitions, he is cited in *Euromoney Legal Media Group Guide to the World's Leading Banking Lawyers* and included in Asian Legal Business' list of 100 pre-eminent Asia-Pacific lawyers. He is a former president of the Inter-Pacific Bar Association.

Mr Morales finished his bachelor of arts in political science (*cum laude*, 1970) at the University of the Philippines, where he also took his bachelor of laws (*cum laude* and class valedictorian, 1974).

He holds a master of laws (1978) from the University of Michigan, where he was a DeWitt Fellow. While in the United States, he trained as a foreign attorney at Rosenman Colin Freund Lewis & Cohen in New York City. He later became a foreign attorney at Anderson Mori & Rabinowitz in Tokyo.

SYCIP SALAZAR HERNANDEZ & GATMAITAN
SyCipLaw Center
105 Paseo de Roxas
Makati City
1226 Metro Manila
Philippines
Tel: +63 2 982 3500
Fax: +63 2 817 3896
ramorales@syciplaw.com
www.syciplaw.com