



Republic of the Philippines
CONGRESS OF THE PHILIPPINES
SENATE

RE : **SPOT REPORT ON THE PUBLIC HEARING CONDUCTED BY THE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, RE: ESTABLISHING A CREDIT INFORMATION BUREAU SYSTEM (SBN 1843) AND THE CORPORATE RECOVERY ACT (SBN 208 AND 1847) HELD ON FRIDAY, 26 NOVEMBER 2004 AT 9:00 A.M., SEN. LORENZO TANADA, PHILIPPINE SENATE**

I. PRELIMINARY

Senator Edgardo J. Angara, Chairman of the Committee on Banks, Financial Institutions and Currencies, promptly commenced the hearing at 9:15 a.m. Also present to provide quorum was Senator Rodolfo G. Biazon.

At the outset, the Chairman emphasized that the hearing was the second for the legislative measures seeking to establish a credit information bureau system and a first for the bills on the Corporate Recovery Act. Senator Angara then mentioned that the Committee seeks the immediate passage of these measures for they have been included and approved in the Senate Priority Agenda.

According to Senator Angara, the establishment of a credit information bureau system is necessary to facilitate credit transactions as well as enable lenders to better manage their risks. The Corporate Recovery Act, on the other hand, would provide ailing corporations an option to expeditiously rehabilitate themselves as compared to the present situation of leaving them no recourse but to liquidate or continue operations at the expense of their stockholders and creditors.

The following persons were in attendance:

Resource Persons	Designation/Office
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ATTY. JUAN DE ZUÑIGA, JR.	Assistant Governor and Legal Counsel Bangko Sentral ng Pilipinas (BSP)
MR. NESTOR ESPENILLA	Assistant Governor Bangko Sentral ng Pilipinas (BSP)
MS. MA. TERESA HABITAN	Director, National Credit Council, Department of Finance (DOF)
FORMER PRIME MINISTER CESAR VIRATA	President, Bankers Association of the Philippines (BAP)
MS. JOSELIA POBLADOR	Commissioner, Securities and Exchange Commission (SEC)
MS. MYRLA GUNDA	Senior Insurance Analyst, Insurance Commission
MS. MARIVIC PERALTA	OIC, Investment Services Division, Insurance Commission
ATTY. LAI-LYNN BARCENAS	Legal Counsel, Financial Executives Institute of the Philippines (FINEX)
ATTY. FRANCIS LIM	President, Philippine Stock Exchange
ATTY. MANUEL YNGSON, JR.	Founding Chairman and President, Corporate Recovery and Insolvency Practitioners Assoc. of the Philippines (Insolfil)
MR. JOHN RYAN	Managing Director Transaction Advisory Services Inc.
MR. JAIME LADAO	President Dun & Bradstreet Philippines, Inc.
MS. VELAYO	Senior Operations Manager CIBI Information Inc.
MS. ALANO	Vice-President CIBI Information Inc.

II. HIGHLIGHTS OF THE MEETING:

1. In relation to the credit information bureau system (SBN 1843), Assistant Governor Nestor Espenilla of the Bangko Sentral (BSP) relayed that the Monetary Board has approved and fully supports the amendments made by the BSP to improve the measure.

He then proceeded with his presentation, providing the Committee additional evidence on the advantages of establishing a credit information system. His presentation was based on researches conducted by the World Bank and by other independent researches. Salient points of his presentation were:

- The benefits to be derived from having a credit system are:
 - It would reduce the difference of information between the lenders and the borrowers
 - Allow lenders to more accurately evaluate risks and improve portfolio quality
 - Ease adverse selection problems and lower costs of credit for good borrowers
 - Increase credit volume
 - Create “Reputational Collateral” through improved discipline in the credit process.
- Assistant Governor Espenilla also presented the results of a survey involving 5,000 firms in 51 countries. The results showed that countries with a credit bureau system reported financial constraints of 27% while those without credit bureau systems reported financial constraints at a high of 49%.
- He highlighted that studies have showed that credit bureaus increase the chances for small and medium enterprises (SMEs) to obtain bank loans by 49% as compared to a probability of only 28% in a situation where there is no credit bureau.
- Lastly, Assistant Governor Espenilla mentioned that based on studies by the World Bank, the credit information system would lead to:
 - Decreases in processing time
 - Decreases in costs of processing
 - Decreases in defaults in payments of loans

2. Ms. Poblador said that the Securities and Exchange Commission (SEC) fully supports the passage of the bill. Although she expressed concern on Sec 5, paragraphs 26-30.

Section 5. Authority of the BSP – the operation and activities of the Submitting Entities and Accessing Entities, which are subject to supervision by the BSP, insofar as their participation in compliance with the Credit Information Bureau System is concerned shall be included in the exercise of the supervisory authority of the BSP over these entities

She explained that by granting the Bangko Sentral authority to supervise the activities as well as the operations of accessing and submitting entities, there would be confusion as to the Bangko Sentral’s jurisdiction and the authority of other regulatory agencies.

3. In line with this, Sen. Angara commended the observation of the Securities and Exchange Commission; he then suggested that the rules and regulations of the credit information bureau system define the extent of supervisory authority granted to the Bangko Sentral and other regulators over the accessing and submitting entities.
4. Assistant Governor Espenilla explained that although the Monetary Board has agreed to change portions of the provision stated in Section 5, he noted that there were other provisions in the measure which grants the Bangko Sentral authority to conduct inspection on the accessing and submitting agencies as to determine the quality and accuracy of the information collected by the Credit Bureau.
5. In response to this concern, Sen. Angara advised the body that with the Bangko Sentral as the major stockholder of the credit bureau, it could then form an oversight committee within its board to validate the information gathered by the system. He added that this would be a better arrangement for the Bangko Sentral because its being the major stockholder and at the same time regulator of the credit bureau system would basically lead to a conflict of interests.
6. Sen. Angara agreed to adopt the proposal of the Monetary Board to rephrase the provision setting the ownership of the Bangko Sentral to read as “up to 49 percent” as to prevent the provision from being construed as prescriptive. He stressed that the principal intent of this provision is to grant the Bangko Sentral substantial ownership that can affect and influence policymaking in the credit bureau.
7. Upon query of Atty. Lim of the Philippine Stock Exchange on the effect of this measure on the Bank Secrecy Law, Assistant Governor Juan de Zuñiga, Jr. explained that the proposed bill will not affect the Bank Secrecy Law since it would not permit the regulators and even the bureau unlimited access to the deposit accounts. He also mentioned that the information to be accumulated by the bureau, would be purely voluntary since the borrowers would have sole discretion over the information they will disclose.
8. Assistant Governor Nestor Espenilla added that while the submission of information for individuals is voluntary, the Bangko Sentral proposes that the disclosure of banks be made mandatory, since these are the main sources of credit information in the system. He also relayed that the Monetary Board should be given leeway to designate other institutions as mandatory providers of information on the grounds that the financial

system is always evolving and that there is a need to grant the system sufficient flexibility to adapt to new entities. This would also enable the system to update and maintain the gathered information over a reasonable period of time.

9. According to Assistant Governor Nestor Espenilla, the mandatory compliance for banks is necessary because aside from being the bulk providers of credit information, most banks handle credit card companies. He then stressed that since consumer credit are very rich sources of information, the Bangko Sentral proposes that the subsidiaries and affiliates of banks in charge of granting credit card loans be made part of the mandatory group that will submit information to the system.

10. Mr. Virata of the Bankers Association of the Philippines explained that the reservations of banks to submit information are rooted to two main reasons. First, are the issues involving confidentiality, privacy and secrecy of bank accounts that impede banks to contribute positive information; while the second, is based on proprietary reasons. He said that the latter occurs in situations where a bank is hesitant to share information on good clients who solely borrow from them to other financial institutions.

Mr. Virata also expressed his concern on information to be submitted regarding the status of land registrations, he explained that these may be inaccurate since many remain unresolved or are still pending in the courts, particularly in the provinces.

11. To address the concerns raised by Mr. Virata, Assistant Governor Espenilla said that data submitted to the credit bureau should be freely shared by all financial institutions and that situations which would allow banks to select the information they are willing to share in the system should clearly be avoided because these situations would create doubts on the comprehensiveness and accuracy of information offered by the system.

12. Mr. Ladao of Dun & Bradstreet mentioned that the pending bill conforms to P.D. 1941, which mandates that the commercial banks provide information to the Central Bank for all loans granted, from one million pesos and above. He also mentioned that the decree presently facilitates the credit information exchange system of the Bangko Sentral

13. On the issue of the consistency of information supplied, Assistant Governor Espenilla explained that there would be a standard report to be systematically submitted by all the financial institutions involved in the system.

14. In response to the suggestion presented by Senator Angara that instead of being regulatory in nature, the credit bureau should be designed to be incentive-consequence based to attract members. Assistant Governor Espenilla, countered that though this

method would result to increased membership, the system would still encounter problems in reaching its critical mass of participation. As a solution, he proposed that the best option for the credit bureau to begin its operations is to divide the participation in the system based on the nature of information disclosed by individual borrowers and by the financial institutions.

15. Assistant Governor Espenilla explained that private credit bureaus such as Dun & Bradstreet as well as private credit rating agencies have an important role in the system as “special accessing entities”. He added that under the draft bill, the Bangko Sentral proposes that these private entities submit credit information that can be efficiently and comprehensively mobilized by the public credit bureau. In return, these private companies have the flexibility to use accessed information for purposes of creating credit reports, ratings or other value to the report as well as identify customers for such services.

16. Mr. Ladao explained that the credit bureaus are distinct and separate from the operations of rating companies such as Dun & Bradstreet because credit bureaus may operate on a 24 by 7 basis, depending on the technology and communication facilities available to access credit information. He also explained that the operations of Dun & Bradstreet begin with credit exposure data from either individuals or corporations and through the information gathered, are able to determine the paying habits of their clients.

With security as one of the main issues of the proposed bill, Mr. Ladao advised the Committee to prevent instances where the information of the credit bureau is used for marketing purposes, as this would attract the entry of individuals with undesirable characters. Lastly, he suggested that the proposed credit bureau be carefully established in accordance with international standards.

17. As to the query of Senator Angara on whether the Bangko Sentral has mandated the use of state-of-the-art technology, Assistant Governor Espenilla responded that although the BSP has no proposal for such, the organization of the credit bureau as a private corporation hopes to attract international organizations and other interested parties to invest in a technology system to be utilized by the system.

18. Senator Angara in agreement with the body said that drafting the safeguards as well as the sanctions for misconduct in the implementing rules and regulations of the measure would result to undue delegation of power to the Bangko Sentral. They have agreed that the standards of conduct as well as the sanctions be set in the bill while the details regarding the sanctions be included in the implementing rules and regulations. They

also agreed to adopt the insertion of an immunity clause, provided that this would not be construed as an amnesty for actions rendered to be grossly reckless, malicious and in bad faith.

19. With regard to the query of Atty. Yngson of Insofil on whether the general public is allowed to access information provided by the credit bureau. Assistant Governor Espenilla said that although the Bangko Sentral has primarily decided on providing information only to financial institutions and to “special accessing entities” such as private credit bureaus and rating agencies, the BSP under its new proposal recommends that with the consent of the party concerned, the “special accessing entities” would be permitted to disclose information to the general public.

20. On the Corporate Recovery Act, Atty. Lim said that this is a welcome development considering that the present Insolvency Act is almost a hundred years old, having been enacted in 1909. He also said that although he was part of the committee in the Supreme Court that drafted the Rules on Corporate Rehabilitation, he disclosed his personal opinion that there is a need to revamp the bankruptcy or insolvency regime of the country in order to provide immediate rehabilitation or liquidation to ailing corporations.

He also said that the proposed measure is better than the Rules on Corporate Rehabilitation by the Supreme Court since it strikes a balance between the rights of the debtors and the creditor. He explained that this is because the rules prepared by the Supreme Court is really a court-controlled rehabilitation process, for the court is given authority to approve a corporation’s rehabilitation plan even over the objection of the majority of its creditors. In addition to this, he mentioned that most courts have the technical expertise to determine the best means to revive insolvent companies.

Lastly, Atty. Lim said that the PSE supports the bill since it authorizes the stakeholders including the court to sub-classify creditors as secured or unsecured. Furthermore, he commented that the fundamental change advocated by the bill is the fast track implementation of pre-negotiated rehabilitations, wherein the debtors and the creditors agree to undertake a rehabilitation plan.

He noted that these amendments are necessary because at present, even with an agreement between the debtors and the creditors, the restructured plan is still subjected to a lengthy process under the present system.

21. As to the query of Senator Angara, on whether the enactment of the proposed bill will affect the interim rules issued by the Court, Atty. Lim responded that this would have

no effect, provided that the law would focus on substantial issues and avoid dealing with procedural matters.

22. Atty. Lim also mentioned that out-of-court settlements is highly favored in corporate rehabilitation and that even the old SEC rules covers situations wherein the debtor who is deemed to be “technically insolvent” is given a relief period to enable him to strike an out-of-court settlement with his creditors.
23. Sen. Angara expressed concern on the issue of asset valuation, stressing that the proposal to dispose assets at fair market value would be a stumbling block in the settlement of corporate affairs, because attracting buyers particularly in the selling of real estate and other hard assets would be difficult. He then proposed that for ailing corporations to secure immediate cash flow, their assets should be disposed based on its present cash value. However, he commented that the disadvantage of disposing assets below fair market value is that it may be in-conflict with the Anti-graft Law and the rules implemented by the Commission on Audit (COA).
24. Mr. John Ryan of the Transaction Advisory Services Inc. presented three possible solutions to this dilemma on asset valuation based on the interim rules for notation receivers. 1.) Sale under fair market value; 2.) Sale of terms and 3.) Sale for cash. He explained that the second refers to assets that are generally placed under the corporation’s liquidation analysis.
25. Mr. Virata of the Bankers Association of the Philippines stressed that banks incur losses when assets are sold below its book value because Central Bank rules require banks to make yearly provisions for the depreciation of their acquired assets. He also added the extension of the Special Purpose Asset Vehicle (SPAV) law is necessary to assist banks in clearing its system of non-performing assets.

Assistant Governor Espenilla supported his statements, saying that under the SPAV law, the Monetary Board has allowed the staggered recognition of the banks’ losses. He also noted that there is a pressing need for banks to present a true picture of its financial strength through fair presentation of its balance sheets.
26. Mr. Yngson said that the issue of asset valuation is not so critical because during rehabilitation, the receiver is normally not allowed to sell or transfer the ownership of assets except in instances duly justified and approved by the courts. He also disclosed that under the present process of liquidation, the distribution of dividends in other forms aside from cash is allowed. He explained that stakeholders entitled to receive

liquidation dividends are made co-owners of the property that will be paid to them by *dacion en pago* by the liquidator.

He then proposed that the bill adopt the proposal to sell below the fair market value since this would be advantageous to the creditors and to other stakeholders.

27. Mr. Ryan said banks' problem on asset valuation could be solved through the implementation of Rule 39 of the International Accounting Standards, which he hopes will be implemented within a year or two. He explained that through this rule the banks will be allowed to settle the value and disposition of assets held in its custody as well as build large additional reserves to address its cash-flow deficiencies.

28. Lastly, Mr. Yngson narrated the highlights of Insofil's position paper on the said measure:

- Change the title from "Corporate Recovery Act" to "Corporate Recovery and Insolvency Act" as to allow the insertion of more provisions on insolvency without violating the limits of the title
- Clearly define the assistance to be extended by the government to corporate entities undergoing rehabilitation or liquidation proceedings, either in the form of collecting filing fees or by deferring tax collection
- There is a need to establish commercial courts because under the present juridical system, there are less than sixty special courts available to undertake liquidation and rehabilitation proceedings
- The liquidator and the receiver should be a graduate of at least a three-years college course similar to that of other countries. It is also recommended that only duly accredited professionals undertake the role as receiver or liquidator.
- Change the term "conservator" to "rehabilitation receiver." This is because conservator is a title given under the New Central Bank Act (R.A. 7653), when a bank is unable or is unwilling to meet its liquidity requirements.
- There is a need to develop and implement pre-negotiated rehabilitation, where the parties negotiate and agree on their rehabilitation plan before submitting it to the court for approval.

Mr. Yngson mentioned that the key to the success of informal workouts in other countries is because their Central Banks require banks to start negotiations with their borrowers the moment they are past due for a certain period as to prevent the loan from becoming non-performing.

- Lastly, he mentioned the insolvency concepts mentioned in the proposed measure should be reviewed and improved.

29. The representatives from the CIBI Information Inc. promised to submit their position paper to the Committee in the coming week

III. FURTHER INSTRUCTIONS:

1. The Bangko Sentral was instructed to submit a paper on the effects of establishing the Credit Information Bureau System on the Bank Secrecy Law and on the General Banking Act.
2. The Chairman requested from Atty. Lim of the PSE to present a comparative view of laws in other countries that would show that out-of-court settlements is more advantageous for corporate rehabilitations
3. Senator Angara also requested Commissioner Poblador to submit a brief on how the Corporate Recovery Act can surmount juridical intervention

IV. ADJOURNMENT:

The Chair requested the resource persons to send their position papers to the Committee to allow the members sufficient time to refine the proposed measures and thereafter adjourned the meeting at 10:52 am.

Committee Secretary: Patricia S. Sarmiento