



Republic of the Philippines  
CONGRESS OF THE PHILIPPINES  
**SENATE**

**SPOT REPORT ON THE PUBLIC HEARING CONDUCTED BY THE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, RE: SBN NOS. 557 AND 1822 – AMENDING THE CENTRAL BANK ACT (R.A. NO. 7653) and SBN 1843 – ESTABLISHING A CREDIT INFORMATION BUREAU SYSTEM HELD ON TUESDAY, 9 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 9:10 a.m. to discuss with the resource persons their proposals and remarks on the legislative measures amending the Central Bank Act (RA No. 7653) as well as impart their views on the bill seeking to establish the credit information bureau system. Also present to provide quorum was Senator Juan Ponce Enrile.

The following resource persons were in attendance:

<b>Resource Persons</b>	<b>Designation/Office</b>
MR. RAFAEL BUENAVENTURA	Governor Bangko Sentral ng Pilipinas (BSP)
MR. ARMANDO SURATOS	Deputy Governor Bangko Sentral ng Pilipinas (BSP)
<b>Resource Persons</b>	<b>Designation/Office</b>

MR. NESTOR ESPENILLA	Assistant Governor, Bangko Sentral ng Pilipinas (BSP)
ATTY. JUAN DE ZUÑIGA, JR.	Assistant Governor and Legal Counsel, Bangko Sentral ng Pilipinas (BSP)
MR. JOSELITO ALMARIO	Deputy Executive Director, National Credit Council, Department of Finance (DOF)
ATTY. FE BARIN	Chairman, Securities and Exchange Commission (SEC)
FORMER PRIME MINISTER CESAR VIRATA	President, Bankers Association of the Philippines (BAP)
MR. LEONILO CORONEL	Executive Director, Bankers Association of the Philippines (BAP)
MS. SYLVIA AMANSEC	Philippine Life Insurance Association
MR. TOMAS CLEMENTE, JR.	President, Chamber of Thrift Banks
MR. BENJAMIN YAMBAO	Chamber of Thrift Banks
MR. ROGELIO FLORETE	Chamber of Thrift Banks
MS. SUZANNE FELIX	Chamber of Thrift Banks
MR. SENEN GLORIOSO	President, Rural Bankers Assoc. of the Philippines (RBAP)
MR. JOBEL CHUA	Treasurer, Rural Bankers Assoc. of the Philippines (RBAP)

## II. HIGHLIGHTS OF THE MEETING:

1. In his opening statement Governor Buenaventura of the Bangko Sentral ng Pilipinas (BSP) said that the bills amending the Central Bank Act are necessary to improve the country's financial system. He further explained that Bangko Sentral has faced many challenges brought about by the changes in the local and global banking environment since the new Central Bank Act took effect in 1993. He said that powers and authority granted by the present Charter seems to be somewhat inadequate to combat and address more efficiently and promptly certain problem situations involving banks, quasi-banks and other financial institutions. In this regard, Governor Buenaventura proposed the adoption of four major amendments to its charter, all of which, he notes, are reflected in Senate Bills 557 and 1822:
  - *Effective supervision to protect public interest* - the Bangko Sentral should be able to examine banks as well as their related companies on a consolidated basis since the performance and exposure of these companies can also affect the financial standing of the parent bank. The BSP proposes either the adoption of higher penal and administrative sanctions or lower penalties but

with higher returns on erring bank directors and officials to deter them from risking non-compliance with regulations.

- *Quality of bank ownership and sound capital position* – the BSP should have the authority to screen incoming substantial stockholders into the system as to prevent the entry of persons with questionable background and capital. Also, the BSP should be allowed to direct acceptance of new capital, mergers and quasi-reorganization for a bank to reflect the true value of its capital.
- *Enhancement of the BSP's capability to administer the monetary and credit system of the Republic* – this includes the strengthening of the payment system which is the key component of the financial structure. Through this, the BSP should be able to obtain data on a broader basis to allow them to formulate better monetary policies.
- *Stronger and Responsive BSP organization* – BSP should have the flexibility to reorganize and provide for separation benefits as well as adopt a compensation structure that is more equity based. Also the BSP seeks to push for adequate level of protection to the examiners who are prone to suits in the performance of their work. Lastly, the BSP wants that the standard of diligence required of them be made similar to that of other public officers.

2. Assistant Governor Juan de Zuñiga, Jr. then proceeded with the presentation of the Bangko Sentral's itemized amendments to the Central Bank Act (RA 7653):

*A. Protection of Public interest; more effective supervision*

1. Section 3 - In relation to the protection of public interest and more effective supervision, the Bangko Sentral proposes that aside from banks, the following entities be placed under their supervision: quasi-banks, trust entities, and other financial institutions which under the Central Bank Act and special laws are subject to BSP supervision.

This will merely align the Bangko Sentral's charter with its counterpart provision in the General Banking Law (RA 8791).

2. Section 25 - For purposes of the authority of the BSP to examine the subsidiaries and affiliates of banks, "Control" shall be redefined to mean not only ownership in voting rights but also includes the power to exercise the voting rights, the power to govern, and the power to appoint or remove the majority of the members of the Board.

Section 28 - Once in every twelve months, the BSP shall conduct examinations in accordance with the guidelines set by the Monetary Board (MB) provided that there shall be an interval of at least twelve (12) months between regular examinations.

The rationale granting the Bangko Sentral an interval of at least twelve months is to allow their examiners to determine the financial condition of subsidiaries and affiliates for their performance can adversely affect the parent institutions. Also, this would mean that well-managed banks need not be subject to rigorous once-a-year examinations.

3. Section 26 – Borrowings by directors, officers, stockholders and their related interests (DOSRI) shall require waiver of the confidentiality of bank deposits.

The Bangko Sentral seeks to expand this to include all DOSRI borrowings irrespective of the percentage of ownership for purposes of transparency in DOSRI transactions for presently waivers covers only stockholders owning more than five percent.

4. Section 30 – Authority of the Monetary Board (MB) to place a bank and quasi-banks under receivership may also be exercised over trust entities and non-stock savings and loan associations (NSSLA) is rendered

The Bangko Sentral strongly recommends the adoption of this proposal, for their authority to supervise is deemed inadequate because even with the findings of insolvency fraud or serious irregularities, the Bangko Sentral has no recourse but to cancel the license of trust entities, thus leaving the assets subject to dissipation. This amendment will also authorize the Bangko Sentral to appoint a receiver to take over the assets of NSSLAs

5. The BSP advises Section 53 of the General Banking Law be incorporated in a new paragraph under Section 30 of the Bangko Sentral charter. It states, “The declaration of a “bank holiday” shall be a ground for receivership. The determination of whether, the assets are insufficient to meet the liabilities shall be based on regulations promulgated by the Monetary Board. Temporary Restraining orders (TROs) against the receivership may be issued only by the Court of Appeals.”

According to Asst. Gov. de Zuñiga, the incorporation of this provision to the charter, would lay down standards to determine solvency, thereby avoiding any claim of arbitrary determination by the Bangko Sentral. Also, through this amendment the issuance of TROs would be subject to a collegial decision of the Court of Appeals.

6. Another proposal under Section 30 is that the receiver of a bank shall have the authority to dispose assets of the bank only for the purposes of reopening and rehabilitation. This is to facilitate the recovery of all claims and deposits.
7. Section 37 – The BSP shall have the authority to impose administrative sanctions not only on banks and quasi-banks, but also on trust entities, their subsidiaries and affiliates engaged in allied activities, and other institutions which under special laws are subject to BSP supervision

Asst. Gov. de Zuñiga explained that the source of Bangko Sentral’s authority to impose administrative sanctions is found in Section 37 of the present Charter. However, the current limitation to banks and quasi-banks has rendered the BSP inadequate of enforcement powers on other financial institutions in requiring their compliance with BSP directives or to compel correction of violations of banking laws and regulations

8. Section 36 and 37 – Criminal fines for violations of the Act shall be increased up to P2 Million. Administrative fines that may be imposed by the Monetary Board shall be increased from a maximum of P30,000 to P300,000 a day for each violation.

The rationale for this proposal is that higher sanctions will serve as a deterrent to the violation or circumvention of regulations. Asst. Gov. de Zuñiga added that based on the present rates, some banks deliberately violate the regulations in exchange for higher returns

9. Section 102 – The Monetary Board may decide whether or not overdrafts shall be allowed at any time for a bank.

This is a necessary amendment for at present a bank which incurs an overdraft in its clearing account with the Bangko Sentral in excess of five consecutive banking days, by operation of law, is excluded from clearing process. Adoption of this amendment would prevent this section from being construed as entitling a bank to a clearing exemption after five days of availing an overdraft. The proposal also gives the Monetary Board flexibility in terms of excluding a bank from being cleared in case of abuse since it involves an unsecured exposure of public funds.

#### *B. Quality of bank ownership; sound capital position*

10. Section 25 – BSP approval shall be required for transfers or acquisition of shares sufficient to elect at least one board seat. Incoming stockholders shall be qualified based on integrity and financial capacity

Asst. Gov. de Zuñiga relayed that the Bangko Sentral wants the authority to screen and qualify incoming substantial stockholders; for this would serve as a preventive measure against the corruption of the system by prospective investors with dubious backgrounds and capital

11. Section 30-A – For capital deficient banks, the Monetary Board may direct the infusion of capital, acceptance of investments or proposals for mergers or consolidation, or to effect a quasi-reorganization to reflect the fair value of their capital.

This amendment is geared towards the protection of public interest by mandating the banks to maintain compliance with capital requirements at all times.

12. Section 108 - The Monetary Board may prescribe minimum risk-based capital adequacy ratios based on internationally accepted standards

This is directed towards the soundness of the capital position of banks and is consistent with Sec. 34 of the General Banking Law directing the Monetary Board to conform to internationally accepted standards on risk-based capital requirements.

#### *C. Enhancing the administration of the monetary, credit and banking system*

13. Section 3 – BSP shall promote the stability of the payment systems

Asst. Gov. de Zuñiga explained that this proposal refers mainly to the real time, gross settlement where the exposure is risked between payment and actual delivery of securities He noted that the Bangko Sentral has been active in the formulation and implementation of improvements on payment systems because it involves bank accounts.

14. Section 23 – The authority of the BSP to obtain data and information for the proper discharge of its functions and responsibilities shall include sourcing said data from, in addition to government offices and agencies, any person or entity.

This proposal seeks to restate a similar authority previously granted to the Bangko Sentral for there is a pressing need that the formulations of their forecasts and economic policies be complemented by its ability to gather information on a broader scale.

15. Section 28 and 116 – The BSP shall have the authority to charge examination fees on the other supervised institutions and fees for other services rendered to banks and other supervised institutions.

The rationale for this amendment is that under the present law, only the charging of supervision fees on bank is mentioned. However, since the BSP also supervises institutions other than banks, these institutions should also compensate the BSP for services rendered.

16. Section 125 and 126 – The BSP shall be exempt from taxes and customs duties

The Bangko Sentral is requesting that it be extended exemption from taxes and custom duties since it is performing a purely governmental function and should not be hampered in its performance by the revenue programs of the government. It also proposes that in lieu of taxes, it instead remit dividends to the national government.

17. Section 128 – The BSP shall be authorized to invest in an enterprise as may be necessary for the performance of its mandate or to qualify for membership in international and regional organizations.

Asst. Gov. de Zuñiga disclosed that the present charter is very strict and disallows the Bangko Sentral from investing in any enterprise. He also said this amendment is necessary to allow the BSP greater involvement in undertakings relating to payment, exchange and credit information systems for the advent of globalization has called upon for more active participation by the BSP in regional and international organizations of central banks and monetary authorities.

#### *D. Stronger and responsive organization*

18. Asst. Gov. de Zuñiga explained that the BSP is requesting the authority to reorganize and to provide for early separation benefits as well as authority to exempt their rank and file positions from the Salary Standardization Law (SSL). This is because as compared to the other government financial institutions (GFI) the BSP is the only GFI where the SSL is partially applicable to rank and file. The partial applicability of the SSL to the rank and file has led to an inequitable and double standard of treating BSP personnel. Lastly, all other GFIs, except for two, have been fully exempt from the SSL
19. Section 15 – Adequate legal protection should be provided personnel of the BSP who are sued in the course of the performance of their duties. They may be held liable only for gross negligence or gross misconduct.

It is the BSP's proposal that protection similar to examiners of other countries such as the United States, Australia, etc. be given to their personnel for they should be able to perform their functions confidently, with firm resolve and without the threat or burden of harassment suits against them.

20. Section 16 – The standard of diligence to be applied to the officials and personnel of the BSP shall be the same rule being applied to public officers under the Revised Administrative Code.

Asst. Gov. de Zuñiga informed the body that the BSP proposes that extraordinary diligence being required of the BSP be brought down to the same standards applicable to the public servants in general. This is because the present provision has virtually encouraged the filing of suits against BSP officials for the slightest perception of any inaccuracy or omission, although immaterial, in the performance of their work.

3. Sen. Enrile sought clarification on the Bangko Sentral's proposal to expand the authority of the Monetary Board to place trust entities and non-stock savings and loan associations (NSSLA) under receivership. Asst. Gov. de Zuñiga then explained that although there has been no trust entity established apart from the bank, this arrangement is allowed by law. And insofar as NSSLAs are concerned, the Monetary Board has encountered problems involving some of these associations but has no authority to place them under receivership.
4. As to the query of Sen. Enrile on granting the receiver authority to dispose the assets of the bank for purposes of reopening and rehabilitation, Asst. Gov. de Zuñiga relayed that under the current ruling the Philippine Deposit Insurance Corporation (PDIC) can only act as receiver and administrator while the disposal of assets is handled by the liquidation court, when it has been determined that a bank is no longer fit to be rehabilitated. Sen. Enrile then countered that due process is not present in this proposal since the PDIC is not subjected to any supervisory authority and the disposal of assets would primarily be the discretion of the Bangko Sentral.
5. In response to Sen. Enrile's query on the standards used by the current law for the Bangko Sentral to declare a bank to be open to receivership, Asst. Gov. de Zuñiga enumerated that there are four grounds for receivership: a.) It should be based on inability to service liabilities as they fall in due course b.) Insolvency c.) Violation of a cease and desist order by the Bangko Sentral, and d.) In cases where the continuance of business would involve losses to the creditors and to the general public. He further said that before the Monetary Board could act on these grounds there must be a report from the examination department and that due process takes place in the opportunity given to the bank to explain the exceptions, violations and failure to comply with the directives of the Bangko Sentral.
6. Sen. Enrile advised the BSP to review its proposal of increasing the administrative and criminal sanctions to be imposed on banks in case of violations because such an increase may result in the closure of small banks.
7. Upon query of Sen. Enrile on the nature of supervisory fees, Asst. Gov. Espenilla of the BSP said that the basis for its implementation is found in the old Central Bank Charter. The supervisory fees are used to compensate direct and indirect cost of examination services rendered to banks. In terms of amounts, the amount currently

charged to universal, commercial and thrift banks is computed at 1/28<sup>th</sup> of one percent of average assessable assets. The rural banks, as provided in the Rural Banks Law, have a lower assessment rate of 1/40<sup>th</sup> of one percent of net assessable assets.

8. In relation to the proposal stated in Item No. 12 (Section 108), Asst. Gov. Espenilla explained that the Monetary Board should be allowed to prescribe minimum risk-based capital adequacy ratios as based on internationally accepted standards recommended by the Basel Committee. This involves the adoption of the formula wherein the minimum capital of the bank is prescribed against its risk-weighted value. He further stated that this proposal is necessary for although the BSP is able to impose a risk-based capital requirement in banks, for at present, the Bangko Sentral is constrained from implementing a minimum that is equal for all banks regardless of the risk-taking nature of a particular bank.
9. With regard to the proposal that Bangko Sentral be exempted from taxes and custom duties, Governor Buenaventura disclosed that for 2003, the BSP paid P913 million worth of taxes to the national government. He added that there would be no discrepancy since the Bangko Sentral is required by law to remit seventy five percent (75%) of their annual income. They also requested that the exemption from custom duties granted to equipments for minting and printing of currency be applied as well to armored vehicles because it is related to the cash management functions of the Bangko Sentral.
10. According to Asst. Gov. de Zuñiga, the amendments to Section 128 should be adopted because the present charter poses a legal obstacle for the Bangko Sentral from joining international or regional organizations such as the Bank for International Settlements and the Association of Southeast Asian Banks, for these organizations require that member countries hold shares in the form of capital subscriptions. He further stated that the adoption of this amendment is necessary for the BSP to invest and be involved in enterprises engaged in credit exchange or payment systems.
11. Mr. Cesar Virata of the Bankers Association of the Philippines posed no objections on the proposed amendments presented by the Bangko Sentral. However, he voiced concerns regarding the proposed increase of administrative and criminal penalties saying that the ceiling amount seems too high. He advised that before this amendment is adopted, a review be first made on its impact on the banking system.
12. In addition, Mr. Virata said that the Bangko Sentral's amendment to the provision regarding DOSRI accounts would result to less people willing to invest in banks, since this suggestion would require waiving the secrecy of their deposits. He then proposed that the disclosure of DOSRI accounts be limited to deposits given as loan collateral to banks.
13. Upon query of Mr. Virata on the conflicting definitions of the term "deposit substitutes", found in Sections 8 and 10 of Senate Bill Nos. 557 and 1822 respectively, Asst. Gov. de Zuñiga said that that the Monetary Board exercises prerogative or at least has an authoritative effect over the definition provided by the Bureau of Internal Revenue (BIR) because this merely originated from that provided by the Banking law. He also added that under the Banking law, the Monetary Board is given authority to exclude certain transactions from classifications as deposit substitutes.



14. Mr. Clemente, president of the Chamber of Thrift Banks, expressed their reservation on the following issues:

- It is the Chamber's opinion that the examiners should not be immune from suit since their observations and opinions can sometimes be biased
- In relation to the DOSRI borrowings, it is the Chamber's view that these are legitimate transactions by a person connected to the bank and should not be subject to waiver of his right of secrecy of deposits, unless it is tied up to a loan.
- Lastly, the Chamber expressed concern over the increase in penalties explaining that even the present P30,000 minimum imposed by the Bangko Sentral is already a hefty amount for thrift banks

15. Upon query on the imposition of penalties, Asst. Gov. de Zuñiga explained that to avoid arbitrary implementation, the Bangko Sentral has prepared a table of penalties through which banks would be able to determine the corresponding penalties of their violations

16. Mr. Glorioso of the Rural Bankers Association expressed concern over the following amendments:

- The provision increasing the maximum fines to P300,000 a day will cause immense impact on the financial resources of rural banks. Due to the fact that only seventy-five percent (75%) of the 736 rural banks in the Philippines have resources amounting to below P100 million.
- The Association fully supports the proposal granting the Bangko Sentral continuous tax exemptions, because this will benefit borrowers and clients in terms of lower bank charges as well as allow the Bangko Sentral to absorb additional operational costs, which would result to lower supervisory fees.

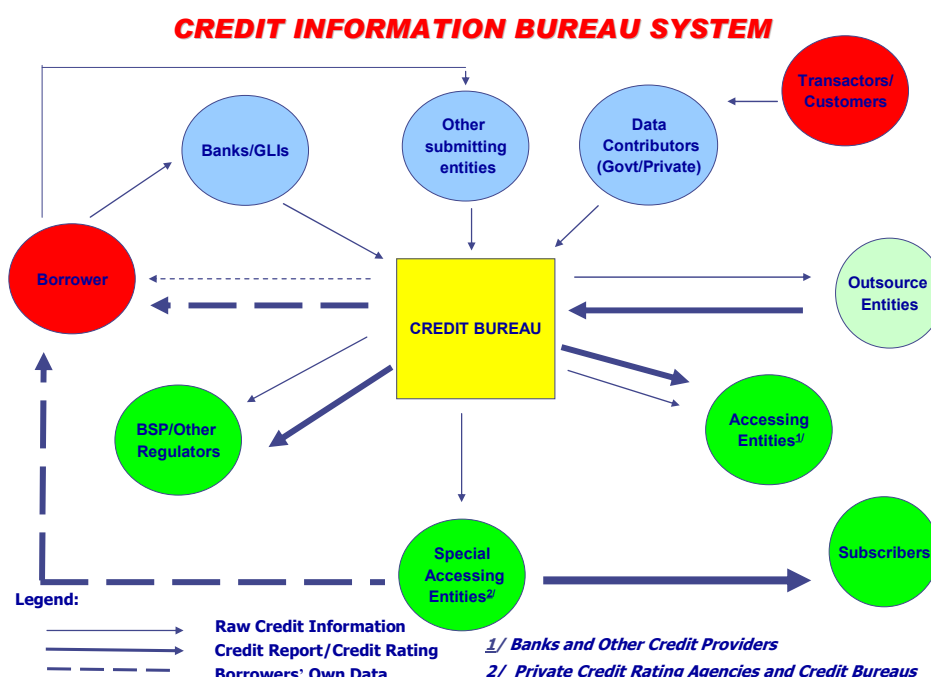
17. On the measure establishing a credit information bureau system, Sen. Angara explained that a centralized credit bureau is a necessity to attract more borrowers and expedite the approval of borrowing transactions.

18. At the onset of his presentation, Mr. Espenilla relayed that the effort to develop a comprehensive credit information system is a joint project by the Bangko Sentral and the Department of Finance (DOF). He disclosed that the absence of credit information is the major barrier of lending and that development of such a system would:

- a. Improve the overall ability of credit, especially to small borrowers
- b. Lower the cost of credit to borrowers who are responsible in paying their obligations
- c. Reduce the excessive reliance on physical collateral to secure credit facilities

He continued that from the regulatory perspective, the availability of a comprehensive credit information would contribute to a healthier and more stable financial system as this would allow lending institutions to access to accurate and reliable credit information and make sounder credit decisions.

19. Mr. Espenilla then presented a diagram illustrating the proposed Credit Information Bureau System:



Mr. Espenilla then explained that as shown in the diagram, there will be two information sources in the credit bureau system, namely: the borrowers and the other entities. The latter will include the customers as well as other transactors. At the center of the scheme is the credit bureau proper. It is being proposed that this entity be allowed to organize under the Corporation Code of the Philippines, with the majority share belonging to the Bangko Sentral. The shares may also be given to investors belonging to industry associations or international organizations interested in improving the information system of member countries.

Mr. Espenilla added in his discussion that the Bangko Sentral and the DOF are contemplating on three means of gathering credit information. First, is through banks and government lending institutions; second, is through entities that would provide credit such as credit cooperatives and micro-finance institutions; and third, are other information sources, such as utility companies, that do not provide credit but possess useful data for credit analysis. Through these modes, the information would be collected, and processed by the credit bureau then redistributed to accessing entities. The accessing entities are primarily the same providers of the credit information such as banks, thus through the relaying of such information, financial institutions can then make appropriate credit transaction decisions. Mr. Espenilla notes that information can also be provided to private credit bureaus and agencies for them to generate assessments of credit worthiness for the benefit of the investing public.

20. As narrated by Mr. Espenilla, the key features of the Credit Information Bureau System are the following:

- The system will have a universal coverage as it encompasses all individual and corporate borrowers
- As part of the safeguard of the system, the borrowers have the right to know credit information on them and dispute the same if inaccurate.

- There are also safeguards to be imposed against breach of confidentiality and misuse of borrower information.
- Another feature is the borrower identification system to facilitate the consolidation of all credit information on a borrower as to provide individual creditors information on the total exposure of a particular borrower to other kinds of creditors
- The Monetary Board shall oversee the operations of the credit information bureau system and prescribe its implementing rules and regulations

21. With regards to the query of Sen. Angara on penalties for misuse of information, Mr. Espenilla said that the bureau will call for the Monetary Board to prescribe sanctions on violations committed. Although he mentioned that at present, the sanctions being contemplated are purely administrative in nature.

22. According to Mr. Virata of the Bankers Association of the Philippines there is a pending need for the establishment of the credit information bureau system to be approved. He related that in his organization they have begun a credit bureau, but only on the basis of a negative file because private sector entities are subject to laws on privacy, secrecy and confidentiality.

23. As there seemed to be conflicting views on the nature of this institution, Ms. Barin of the Securities and Exchange Commission, clarified that despite having the credit bureau organized under the Corporation Code of the Philippines but with most of its stockholders, however, belonging to the Bangko Sentral, would hence form a government entity. The solution Sen. Angara proposed on this matter is for the Bangko Sentral to own forty-nine percent (49%) of the shares thus enabling the credit bureau to become a private corporation.

24. Sen. Angara urged the immediate passage of Senate Bill No. 1822, for he explained that having ninety-seven percent (97%) of enterprises financed by banks is an unhealthy monetary situation. He added that this measure is a means of expanding the country's capital market, which in turn would strengthen the overall banking and financial sector.

### **III. FURTHER INSTRUCTIONS:**

1. Sen. Enrile asked to be provided the following information:
  - a. The number of bank officials involved in the problem of DOSRI loans
  - b. Documents confirming the implementation of supervisory fees under American and European law
2. Asst. Gov. de Zuñiga promised to furnish the Committee a list of all work-related cases filed against personnel of the Bangko Sentral

### **IV. ADJOURNMENT:**

The Chair requested the resource persons to send in their position papers to the Committee to allow the members sufficient time to refine the proposed measures and thereafter adjourned the meeting at 11:08 a.m.