

In Concordia: Selected Amendments

Introduced by Republic Act No. 11211 to Republic Act No. 7653 vis-à-vis Existing Laws and Jurisprudence

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I. INTRODUCTION

The life of the law has not been logic; it has been experience.

— Oliver Wendell Holmes, Jr.¹

By constitutional fiat, the Bangko Sentral ng Pilipinas (BSP), as the independent central monetary authority, provides policy direction in the areas of money, banking, and credit.² It has supervision over the operations of banks and exercises regulatory powers over the operations of finance companies and other institutions performing similar functions.³ Relative to this constitutional mandate, its charter, Republic Act No. 7653 or the New Central Bank Act (NCBA),⁴ which took effect on 1 July 1993, sets forth the BSP's primary objective of maintaining price stability conducive to a balanced and stable growth of the economy and of promoting and maintaining monetary stability and convertibility of the peso.⁵

Republic Act No. 11211, signed into law on 14 February 2019 and took effect on 5 March 2019, introduces amendments to the legal framework of central banking embodied in the 26-year old NCBA.⁶ The amendments

1. OLIVER WENDELL HOMES, *THE COMMON LAW* 1 (2009 ed.).

2. PHIL. CONST. art. XII, § 20.

3. PHIL. CONST. art. XII, § 20.

4. The New Central Bank Act, Republic Act No. 7653 (1993).

5. *Id.* § 3. See 1 BANGKO SENTRAL NG PILIPINAS, *BANKING LAWS OF THE PHILIPPINES: THE NEW CENTRAL BANK ACT ANNOTATED 20* (2010). Price stability is explained as appertaining “to the domestic consumer index that is not moving, or to domestic inflation rate at zero. In reality, this may not hold true due to uncontrollable factors” in the economy. *Id.*

Thus, price stability is interpreted to mean two things: first, that the changes of the general price level or the domestic inflation rate are minimal; and second, such changes are not severely erratic. Hence, price stability conducive to a balanced and sustainable growth of the economy means achieving a balanced growth of the economy as a result of monetary policy that is neutral with respect to all sectors of the economy or a monetary policy that does not favor one sector over the other. *Id.*

6. An Act Amending Republic Act 7653, Otherwise Known as “The New Central Bank Act,” and for Other Purposes, Republic Act No. 11211 (2019).

sanction the BSP to “further align its operations with global best practices, improve BSP’s corporate viability, and enhance its capacity for crafting proactive policies amid rising interlinkages in the financial markets and the broader economy.”⁷ According to the BSP’s Senior Assistant Governor and General Counsel Elmore O. Capule, “Republic Act No. 11211 enhances the central bank’s capacity to promote price stability, financial stability, and a safe and reliable payments system. The law, which central bankers worked on for more than 20 years, is ultimately aimed at enhancing the economic and financial wellbeing of Filipinos.”⁸

As is the case for every other law, in enacting Republic Act No. 11211, the legislature is presumed to be aware of other existing laws on the same matter.⁹ The Congress would not have passed or included therein provisions that run afoul to these laws, unless the clear intention of Republic Act No. 11211 is to modify or repeal the same.¹⁰ Hence, elementary in statutory construction is that “every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.”¹¹ As expressed in the maxim *interpretare et concordare legibus est optimus interpretandi*, “every statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent[,] and intelligible system.”¹² Thus, the amendments introduced by Republic Act No. 11211 must be viewed not in isolation but in relation to every other statute as to form a uniform system of jurisprudence.

7. Bangko Sentral ng Pilipinas. President Duterte Signs BSP’s Charter Amendments into Law, Law strengthens BSP’s capacity to foster price and financial stability, *available at* <http://www.bsp.gov.ph/publications/media.asp?id=4942> (last accessed Nov. 30, 2019).

8. Bangko Sentral ng Pilipinas. BSP Conducts Info Campaign on Amended Central Bank Charter in Cebu City, *available at* <http://www.bsp.gov.ph/publications/media.asp?id=5143> (last accessed Nov. 30, 2019).

9. Gonzales III v. Office of the President of the Philippines, 679 SCRA 614, 649 (2012).

10. Mecano v. Commission on Audit, 216 SCRA 500, 504 (1992).

11. Office of the Solicitor General (OSG) v. Court of Appeals, 725 SCRA 469, 476 (2014) (citing Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation, 659 SCRA 756, 764 (2011)).

12. *Id.*

In view of the BSP's critical constitutional mandate, clarity on the extent and implications of the amendments introduced by Republic Act No. 11211 to the NCBA is in order. As a starting point, selected amendments, particularly those that have far-reaching implications to banks and other supervised financial institutions, the public, and the BSP itself, will be harmonized with other existing relevant laws and jurisprudence.

II. THE AMENDMENTS UNDER REPUBLIC ACT NO. 11211

A. *The Evolution of the Philippine Central Banking*

As a field of law, commercial law is said to be characterized as “progressive because it accumulates new ideas and keeps abreast with contemporary developments.”¹³ This is especially true for one of its specialized fields, the banking law, particularly the law on central banking.

The predecessor law of the NCBA, Republic Act No. 265 or the Central Bank Act of 1948, created the defunct Central Bank of the Philippines to administer the monetary and banking system with the objectives of “[maintaining] monetary stability, [preserving] the international value of the peso and the convertibility of the peso into other freely convertible currencies, and [promoting] a rising level of production, employment, and real income in the Philippines.”¹⁴ The creation of the Central Bank of the Philippines was a response not only to curb the inflationary effect of extensive war damage payments made by the United States to the Philippines at that time and to correct defects in the currency system,¹⁵ but also to establish an institution to administer the banking and monetary system as the banks were then doing businesses independently of each other with little regard to the effect of their decisions on the general economy.¹⁶ The Central Bank Act of 1948 itself had undergone several amendments introduced by Presidential Decree Nos. 72, 1007, 1283, 1313,

13. CESAR L. VILLANUEVA & GABRIEL S. VILLANUEVA, *COMMERCIAL LAW REVIEW* 2 (2015 ed.) (citing JOSE N. NOLLEDO, *COMMERCIAL LAW REVIEWER* 2 (1991 ed.)).

14. An Act Establishing the Central Bank, Defining its Powers in the Administration of Monetary and Banking System, Amending the Pertinent Provisions of the Administrative Code with Respect to the Currency and the Bureau of Banking, and for Other Purposes, Republic Act No. 265, § 2 (1948).

15. *I BANKO SENTRAL NG PILIPINAS*, *supra* note 5, at 8.

16. *Id.* at 9.

1771, 1827, and 1937, and Batas Pambansa Blg. 67, with the Presidential Decree No. 72 at the forefront to enable the banking system to keep pace with the demands of the economy and introduce reforms in the banking sector that had been long overdue.¹⁷

Under the 1973 Constitution, the defunct Central Bank of the Philippines was recognized as the country's central monetary authority until such time that Congress shall have established a central bank.¹⁸ "The 1987 Constitution continued to recognize this function of the [defunct] Central Bank of the Philippines, until [the] Congress, pursuant to the Constitution, created a new central monetary authority which later came to be known as the [BSP,]"¹⁹ created under the NCBA. Verily, the promulgation of the NCBA is "said to have been greatly influenced by the trend among central banks around the world to singularly focus on maintaining price stability in their respective economies."²⁰ To achieve this and to realize its constitutional mandate, the NCBA vested the BSP with the powers and functions which include:

- (1) supervision over the operation of banks;
- (2) regulation of operations of finance companies and non-bank financial institutions performing quasi banking functions;
- (3) sole power and authority to issue currency within the Philippine territory;
- (4) engaging in foreign exchange transactions;
- (5) making rediscounts, discounts, loans and advances to banking and other financial institutions to influence the volume of credit consistent with the objective of achieving price stability;
- (6) engaging in open market operations; and
- (7) acting as banker and financial advisor of the government.²¹

17. *Id.* at 10-11.

18. *Bank of Commerce v. Planters Development Bank*, 681 SCRA 521, 550 (2012) & 1973 PHIL. CONST. art. XV, § 14 (superseded 1987).

19. *Bank of Commerce*, 681 SCRA at 550.

20. 1 *BANKO SENTRAL NG PILIPINAS*, *supra* note 5, at 1.

21. *Bank of Commerce*, 681 SCRA at 551.

Since the effectivity of NCBA in 1993, numerous developments have transpired in the economy. The economic blow of the 1997 Asian Financial crisis within and outside the Philippines has necessitated prudential adjustments to existing monetary instruments to address, if not avert, similar crises in the future.²² The rapid technological advancement in the years that followed and the ever-increasing complex global commercial transactions have given birth to new financial industries, warranting not only reforms in the banking and financial sectors but also modification in the monetary policies.²³ The banking system itself had to adjust with the fast-paced demands of the expanding economy. While banks and other financial institutions have had the flexibility to adapt to these economic developments, revise their policies, and accordingly modify their operations, the BSP's hands have been tied for its responsibilities and powers are delineated by the NCBA. Without amendments thereto, the BSP could not act beyond the words and intent of the provisions of its charter; otherwise, it would unnecessarily expose the nation to inconsistent, if not unsound, economic policies, and the BSP and its officers to the risks of litigation for acting without jurisdiction or with grave abuse of discretion. Verily, "the dynamism by which the commercial world moves often means that the covering statutory system lags behind actual commercial progression and innovations."²⁴

In response to these changes, Republic Act No. 11211 was passed amending the NCBA to address both gradual and radical economic developments by supplementing the BSP's powers in order that it may fully realize its constitutional mandate. In fact, the BSP itself pushed for the passage of its organic law with the following motives: "(1) strengthen its monetary stability functions; (2) enhance its financial stability and prudential supervision functions; and (3) reinforce its corporate and financial viability."²⁵

22. See Cristeta B. Bagsic & Eloisa T. Glindro, *Bangko Sentral ng Pilipinas Modernization: A Policy Perspective (A Working Paper Series Published Online by the Bangko Sentral ng Pilipinas)*, available at <http://www.bsp.gov.ph/downloads/Publications/2006/WPS200601.pdf> (last accessed Nov. 30, 2019).

23. *Id.*

24. VILLANUEVA & VILLANUEVA, *supra* note 9, at 2.

25. Bangko Sentral ng Pilipinas, 2018 Annual Report Navigating the Future (An Annual Report Published by the Bangko Sentral ng Pilipinas) at 79, available at

B. The Clusters of Amendments under Republic Act No. 11211

Upon meticulous review, the amendments introduced by Republic Act No. 11211 to the NCBA may be clustered into five. The first reinforces BSP's financial and corporate viability. The second strengthens the BSP's function to maintain monetary stability. The third strengthens the BSP's financial supervisory function. The fourth introduced financial reforms. The fifth covers the miscellaneous amendments.

I. The Amendments Reinforcing BSP's Financial and Corporate Viability

While the BSP is not a corporation but a government instrumentality, it nonetheless possesses corporate powers to do and perform any and all things that may be necessary or proper to carry out the purposes of the NCBA and those essential to the proper conduct of BSP's operations.²⁶ To fund its operations, the NCBA grants the BSP capitalization in the amount of ₱50 Billion.²⁷ Apart from the capitalization provided, the BSP does not rely on Congress for budgetary support,²⁸ as it generates money from its own operations²⁹ and operates under a budget and expenditures adopted by the Monetary Board³⁰ for a given fiscal year.³¹ On the contrary, it is the BSP which provides funds to the national government through mandatory remittance of 75% of its net profits as dividends.³²

Considering the growth in size and scale of the Philippine economy and the financial system, the corporate powers and capitalization set back in 1993, or 26 years ago, are no longer commensurate to fulfill BSP's

<http://www.bsp.gov.ph/downloads/publications/2018/annrep2018.pdf> (last accessed Nov. 30, 2019) [hereinafter 2018 Annual Report].

26. Republic Act No. 7653, § 5.

27. *Id.* § 2.

28. 1 BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 61 (citing S. 1235, 9th Cong. Record of the Senate 893 (June 3, 1993) (enacted)).

29. *Id.*

30. The Monetary Board is the body exercising the powers and functions of the BSP. Republic Act No. 7653, § 6.

31. *Id.* § 15 (d).

32. *Id.* § 132 (b).

mandate.³³ Moreover, since the BSP's tax exemption from all national, provincial, municipal, and city taxes, fees, charges, and assessments expired in 1998,³⁴ the BSP is liable for the payment of taxes, fees, charges, and assessments, even for transactions arising from its core or governmental functions.³⁵ Also, while the BSP mandatorily remits 75% of its net income to the national government,³⁶ there is no similar mechanism in the NCBA for the sharing of the burden with respect to losses incurred. Thus, when the BSP incurs a loss, its capital erodes as there is no loss-sharing arrangement between the national government and the BSP.³⁷

To address these concerns, thereby strengthening the BSP's financial and corporate viability, Republic Act No. 11211 introduced the following key amendments:

- (1) Increase of BSP's capitalization from ₱50 Billion to ₱200 Billion and funding said increase solely from the declared dividends of the BSP in favor of the national government;³⁸
- (2) Restoration of tax exemption on all income derived from governmental functions;³⁹
- (3) Allowing the set-up of allowances and provisions for contingencies in the computation of profits and losses⁴⁰ and the set-up of a reserve fund;⁴¹ and

33. Bangko Sentral ng Pilipinas, *The BSP: Paying the Price for Stability (A Primer Published by Bangko Sentral ng Pilipinas)* at *2, available at <http://www.bsp.gov.ph/downloads/primers/Stability.pdf> (last accessed Nov. 30, 2019) [hereinafter *Bangko Sentral ng Pilipinas, The BSP: Paying the Price for Stability*].

34. Republic Act No. 7653, § 125.

35. Bangko Sentral ng Pilipinas, *The BSP: Paying the Price for Stability*, *supra* note 33.

36. *Id.* at *3.

37. *Id.*

38. Republic Act No. 11211, § 1.

39. *Id.* § 44.

40. *Id.* § 23.

41. *Id.* § 24.

(4) Enhancement in the credit operations.⁴²

2. The Amendments Strengthening the BSP's Monetary Stability Function

Monetary stability pertains to the stability of the peso and its international value.⁴³ Vested with the power to formulate policy directions in money, banking, and credit, the BSP is thus entrusted with the duty to ensure monetary stability. Policy formulation requires intensive information. Unlike in the Central Bank Act of 1948, as amended, which granted the defunct Central Bank of the Philippines the power to request data from any person or entity,⁴⁴ the NCBA limits the request of data from government offices and instrumentalities, or government-owned or controlled corporations.⁴⁵ The quality of monetary policy, however, is “dependent on the relevance, reliability, timeliness, and comprehensiveness of the information used.”⁴⁶ Also, unlike in the Central Bank Act of 1948, as amended, which empowered the defunct Central Bank of the Philippines to issue its own securities as part of standard monetary operations,⁴⁷ the NCBA limited the BSP's issuance thereof in cases of extraordinary movement in the price level,⁴⁸ thereby removing an additional instrument for liquidity management, flexibility in managing structural liquidity, and ensuring macroeconomic stability.⁴⁹ Furthermore, the emergence of new financial industries — such as the money service businesses, credit granting businesses, and payment system operators — has economic and financial implications to monetary stability.

In ensuring that the BSP continues to provide timely and relevant monetary policies for the effective performance of its monetary stability functions, Republic Act No. 11211 presented the following key amendments:

42. *Id.* §§ 31-34.

43. 1 BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 21.

44. Republic Act No. 265, § 23.

45. Republic Act No. 7653, § 25.

46. Bangko Sentral ng Pilipinas, 2018 Annual Report, *supra* note 25, at 79.

47. Republic Act No. 265, § 98.

48. Republic Act No. 7653, § 92.

49. Bangko Sentral ng Pilipinas, 2018 Annual Report, *supra* note 25.

- (1) Restoration of authority to required data from any private person or entity for statistical and policy development purposes;⁵⁰
- (2) Restoration of authority to issue negotiable certificates of indebtedness even during normal times;⁵¹
- (3) Recognition of broader set of indicators, aside from monetary aggregates, as guiding principles in monetary administration;⁵²
- (4) Formal recognition of financial stability as part of mandate;⁵³ and
- (5) Grant of regulatory and examination powers over money service businesses, credit granting businesses, and payment system operators, including the oversight of the payment and settlement systems in the Philippines.⁵⁴

3. The Amendments Strengthening the BSP's Financial Supervision Function

Besides its constitutional duty to provide policy direction in the areas of money, banking, and credit, the BSP is also given the financial supervision function, that is, supervision over the operations of banks, and exercises such regulatory powers over the operations of finance companies and other institutions performing similar functions.⁵⁵ Indeed, “[e]ffective banking supervision and regulation fosters the smooth and orderly functioning of key players in the financial system, adequate protection to investors and depositors, and prevention of both isolated and systemic failures of financial institutions.”⁵⁶

The NCBA — in relation to Republic Act No. 8791 or the General Banking Law (GBL), the primary law governing banks, and other special laws — thus details the BSP's supervisory and regulatory powers over banks,

50. Republic Act No. 11211, § 7.

51. *Id.* § 37.

52. *Id.* §§ 26-27.

53. *Id.* § 2.

54. *Id.*

55. 1 BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 22.

56. *Id.*

subsidiaries and affiliates of banks engaged in allied activities, quasi-banks, subsidiaries and affiliates of quasi-banks engaged in allied activities,⁵⁷ trust entities,⁵⁸ pawnshops,⁵⁹ and non-stock savings and loan associations.⁶⁰ Undeniably, the BSP “may be the exclusive regulator or a co-regulator together with such other agencies as the Securities and Exchange Commission, the Philippine Deposit Insurance Corporation (PDIC), and the Insurance Commission.”⁶¹ The overlapping of the powers of regulation calls for the much needed coordination between the BSP and these agencies. Added to this is the need to revise certain regulations and to strengthen criminal and administrative sanctions to adapt to the developments in the banking and monetary systems. Moreover, since the passage of the NCBA, new financial industries, such as money service businesses, credit granting businesses, and payment system operations, have sprung to cater to the expanding needs of the public due to ever-growing complex commercial transactions.

To these challenges, Republic Act No. 11211 responded by introducing the following key amendments:

- (1) Coordination with BSP before licenses of banks and supervised entities may be revoked by other government agencies;⁶²
- (2) Revision of the definition of subsidiaries and affiliates and establishing a mechanism for issues arising from bank examinations;⁶³
- (3) Requiring the approvals for transfers or acquisitions of at least 10% of the voting shares in banks or quasi-banks;⁶⁴

57. See An Act Providing for the Regulation of the Organization and the Operation of Banks, Quasi-Banks, Trust Entities and for Other Purposes [General Banking Law of 2000], Republic Act No. 8791 (2000).

58. *Id.* §§ 79-93.

59. See Regulating the Establishment and Operation of Pawnshops [Pawnshop Regulation Act of 1973], Presidential Decree No. 114 (1973).

60. See An Act Providing for the Regulation of the Organization and Operation of Non-Stock Savings and Loan Associations [Revised Non-Stock Savings and Loan Associations Act of 1997], Republic Act No. 8367 (1997).

61. 1 BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 22.

62. Republic Act No. 11211, § 12.

63. *Id.* § 8.

- (4) Increase in the sanctions for criminal violations and providing informer's reward;⁶⁵
- (5) Strengthening the administrative sanctions;⁶⁶
- (6) Enhancement of recovery and resolution mechanisms to deal with problematic financial institutions;⁶⁷
- (7) Deletion of Section 31 on the distribution of assets of closed banks and quasi-banks⁶⁸ and Section 32 on the disposition of revenues and earnings of closed banks and quasi-banks;⁶⁹
- (8) Grant of regulatory and examination powers over money service businesses, credit granting businesses, and payment system operators, including the oversight of the payment and settlement systems in the Philippines;⁷⁰
- (9) Allowing full flexibility to conduct risk-based operations;⁷¹ and
- (10) Affording legal protection for the BSP officials and staff when performing official duties.⁷²

4. The Amendments Introducing Financial Reforms

Republic Act No. 11211 likewise introduced financial reforms and innovations aimed at ensuring a more inclusive banking and monetary system, as follows:

- (1) Introduction of financial facilities for Islamic banks;⁷³

64. *Id.* § 9.

65. *Id.* § 18.

66. *Id.* § 19.

67. *Id.* § 13.

68. Republic Act No. 11211, § 14.

69. *Id.* § 15.

70. *Id.* § 2.

71. *Id.* §§ 8; 11; & 41.

72. *Id.* §§ 4 & 5.

73. *Id.* § 35.

- (2) Authority for the grant of loans to PDIC for insurance purposes and in cases of financial assistance in accordance with its charter, Republic Act No. 3591, as amended, or the PDIC Law;⁷⁴ and
- (3) Revision of the definition of “public” in connection with quasi-banking activities.⁷⁵

5. Miscellaneous Amendments

Other key amendments introduced by Republic Act No. 11211 that enhanced and strengthened the BSP’s overall operational processes and not grouped with the above clusters include:

- (1) Allowing the conduct of monetary board meetings through modern technologies such as teleconferencing and videoconferencing;⁷⁶
- (2) Increase in the number of the deputy governors from three to five;⁷⁷
- (3) Prohibition on the issuance of injunctive reliefs against the BSP actions;⁷⁸
- (4) Relaxation of the prohibition of the BSP personnel to borrow from any institution subject to supervision and examination;⁷⁹
- (5) Publication and submission of reports and publications by the BSP to the President and Congress;⁸⁰
- (6) Deletion of the provision on the withholding of the salary of the concerned BSP personnel in case of failure to submit annual report without justifiable reason;⁸¹

74. Republic Act No. 11211, § 26.

75. *Id.* § 38.

76. *Id.* § 3.

77. *Id.* § 6.

78. *Id.* § 20.

79. *Id.* § 10.

80. Republic Act No. 11211, § 21.

81. *Id.* § 22.

- (7) Clarification of the provision on Revaluation of International Reserves to include movements of prices and exchange rates;⁸²
- (8) Deletion of certain considerations in the composition of international reserves to grant flexibility to the monetary Board;⁸³
- (9) Inclusion of financial stability as guiding principle for the BSP credit policies;⁸⁴
- (10) Addition of other collaterals for emergency loans and advances;⁸⁵
- (11) Grant of authority to the Monetary Board to waive reserve deficiency penalties;⁸⁶
- (12) Grant of authority to the Monetary Board to define categories of banks relative to the application of the BSP rules and regulations;⁸⁷
- (13) Grant of authority to the BSP to accept deposits from supervised entities;⁸⁸
- (14) Providing the form of different credit facilities and required opinion by the Monetary Board;⁸⁹
- (15) Inclusion of exemptions from the prohibition on the BSP to acquire shares and participate in the management of an enterprise;⁹⁰
- (16) Remittance of certain percentage of the net profit;⁹¹ and

82. *Id.* § 25.

83. *Id.* § 28.

84. *Id.* § 29.

85. *Id.* § 30.

86. Republic Act No. 11211, § 39.

87. *Id.* § 40.

88. *Id.* § 42.

89. *Id.* § 43.

90. *Id.* § 45.

91. *Id.* § 46.

(17) Need for harmonization.

By and large, the foregoing amendments under Republic Act No. 11211 have a direct impact to the BSP as an institution, the banks and other supervised financial institutions, and, ultimately, the public. While Republic Act No. 11211 amends the NCBA, it cannot be said that the amendments affect only the NCBA. Indeed, while Republic Act No. 11211 directly affects the NCBA, it indirectly disturbs relevant existing laws and settled jurisprudence. After all, Republic Act No. 11211 does not exist in a legal vacuum, nor is it intended to be so.

In this regard, it must be recalled that “interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the maxim, *interpretare et concordare legibus est optimus interpretandi*.”⁹² This especially holds for statutes *in pari materia*, as they “relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.”⁹³ Truly,

as laws are presumed to be passed with deliberation with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to some matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure renewed.⁹⁴

Naturally, the term *law* as herein used includes settled jurisprudence. The decisions of the Supreme Court,

although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code ‘[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system’ The interpretation upon a law by [the Supreme] Court constitutes, in a way, a part of the law as of the date

92. *Civil Service Commission v. Court of Appeals*, 682 SCRA 353, 378 (2012) (citing *Valencia v. Court of Appeals*, 401 SCRA 666, 680 (2003) & *Dreamwork Construction, Inc. v. Janiola*, 591 SCRA 466, 474 (2009)).

93. *Office of the Solicitor General (OSG)*, 725 SCRA at 475 (citing *Philippine Economic Zone Authority*, 659 SCRA at 764).

94. *Mecano*, 216 SCRA at 508–09 (citing *Smith, Bell, & Co. v. Estate of Maronilla*, 41 Phil. 557, 562 (1916)).

that law originally passed, since the Supreme Court's construction merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate.⁹⁵

Admittedly, interpretation is a judicial function.⁹⁶ Nonetheless, an extrajudicial interpretation with the view of clarifying and, ultimately, harmonizing related laws, may be desirable, if not necessary, in order to prevent confusion and forestall litigation. Curiously, the various laws under the specialized field of Banking Law are not codified but are scattered as special laws, such as the NCBA, the GBL, and the PDIC Law. As Republic Act No. 11211 directly affects the NCBA, it has, to some extent, affected the GBL and the PDIC Law, as well as other related laws. Therefore, each amendment under Republic Act No. 11211 deserves a detailed assessment vis-à-vis relevant existing laws and settled jurisprudence.

For the purposes of this Article, however, only three key amendments will be discussed and harmonized vis-à-vis relevant existing laws and settled jurisprudence. The *first* key amendment is Section 13 of Republic Act No. 11211, amending Section 30 of the NCBA on the enhancement of recovery and resolution mechanisms to deal with problematic financial institutions, which has a direct impact on banks and other supervised financial institutions. The *second* is Section 20 of Republic Act No. 11211, introducing Section 38-A to the NCBA on the prohibition on the issuance of injunctive reliefs against the BSP actions, which greatly impacts the public in general. The *third* is Section 44 of Republic Act No. 11211, amending Section 126 on the restoration of the BSP's tax exemption on all income derived from governmental functions, which has direct operational implication on the BSP.

III. FIRST KEY AMENDMENT: ENHANCEMENT OF RECOVERY AND RESOLUTION MECHANISMS TO DEAL WITH PROBLEMATIC FINANCIAL INSTITUTIONS

A. Introduction

The vital role of banks in providing an environment conducive to the sustained development of the national economy justifies the State's policy of promoting and maintaining a stable and efficient banking and financial

95. *People v. Jabinal*, 55 SCRA 607, 612 (1974).

96. *Song Kiat Chocolate Factory v. Central Bank of the Philippines, et al*, 102 Phil. 477, 481 (1957) (citing *Endencia vs. David*, 93 Phil. 696, 700 (1953)).

system that is globally competitive, dynamic, and responsive to the demands of a developing country.⁹⁷ The GBL thus placed adequate measures to ensure the stability and efficiency of the banking institutions and, in relation to the NCBA, provides procedures on handling problematic banks and related supervised financial institutions. This is outlined in Section 30 of the NCBA, as follows —

SECTION. 30. *Proceedings in Receivership and Liquidation.* — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

- (1) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, that this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community; [or]
- (2) has insufficient realizable assets, as determined by the [BSP], to meet its liabilities; or
- (3) cannot continue in business without involving probable losses to its depositors or creditors; or
- (4) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the [PDIC] as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designated as receiver. The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: *Provided*, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than [90] days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: *Provided*, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

97. General Banking Law of 2000, § 2.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

- (1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the [PDIC] for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution [and]
- (2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within [10] days from receipt by the board of directors of the institution of the order directing receivership, liquidation[,] or conservatorship.

The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with

the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.⁹⁸

The importance of this law on proceedings in receivership and liquidation cannot be overemphasized. As of 30 September 2019, there are 376 banks, mostly rural and thrift banks, under liquidation, 327 of them with no approved final asset distribution plan yet.⁹⁹ In 2016, a total of 22 banks were closed down, 20 were rural banks and two were thrift banks.¹⁰⁰ In 2017, seven banks closed down, six were rural banks and one was a thrift bank.¹⁰¹ In 2018, 12 banks were closed down, 11 are rural banks and one thrift bank.¹⁰² From January to June 2019 alone, the Monetary Board already closed seven problematic banks and placed them under receivership.¹⁰³

Every time a problematic bank is closed, hundreds — if not thousands — of deposit accounts are jeopardized to the prejudice of the public. For instance, the Malasiqui Progressive Savings and Loan Bank, Inc., a single-unit thrift bank, which was shuttered by the Monetary Board in 2018, had 1,064 deposit accounts with total deposit liabilities of ₱73.5 Million, 91.8% thereof (or ₱67.5 Million) are covered by the PDIC insurance.¹⁰⁴ The Bagong Bangko Rural ng Malabang (Lanao del Sur), Inc., the first

98. Republic Act No. 7653, § 30.

99. See Philippine Deposit Insurance Corporation, Banks under PDIC Liquidation as of 30 September 2019, available at http://www.pdic.gov.ph/files/banks_under_liquidation.pdf (last accessed Nov. 30, 2019).

100. BanksPhilippines, Banks Closed Down in 2018, available at www.banksphilippines.com/2018/02/banks-closed-down-in-2018.html (last accessed Nov. 30, 2019).

101. BanksPhilippines, Philippine Banks Closed Down in 2017, available at <https://www.banksphilippines.com/2017/02/philippine-banks-closed-down-in-2017.html> (last accessed Nov. 30, 2019).

102. BanksPhilippines, *supra* note 100.

103. See Philippine Deposit Insurance Corporation, Notices to the Public on Bank Closures, available at <http://www.pdic.gov.ph/?nid1=64&ntpbankclosures=1> (last accessed Nov. 30, 2019).

104. The Sunday Punch, MB closes Malasiqui Progressive Savings Bank, available at <https://punch.dagupan.com/articles/news/2018/09/mb-closes-malasiqui-progressive-savings-bank> (last accessed Nov. 30, 2019).

problematic bank shuttered in 2019, had 1,382 deposit accounts with total deposit liabilities of ₱62.35 Million, only 59.7% thereof (or ₱37.26 Million) are insured deposits.¹⁰⁵ The last bank shuttered by the Monetary Board in the first semester of 2019 was the Bulacan-based East Coast Rural Bank of Hagonoy, Inc., a single-unit rural bank that had 1,412 deposit accounts with total deposit liabilities of ₱122 Million, 91.36% thereof (or ₱111.4 Million) are insured deposits.¹⁰⁶ Under the PDIC Law,¹⁰⁷ depositors of all valid deposits and claims would be paid to the maximum deposit insurance coverage of ₱500,000.00.¹⁰⁸ The amount in excess thereof will not be paid, but the depositor concerned retains the claim for such uninsured portion,¹⁰⁹ which the depositor may file during liquidation, the recovery of which is subject to all claims based on the rules on concurrence and preference of credits under the New Civil Code.¹¹⁰ Nevertheless, whether the depositors recover the amount representing their insured deposits and their uninsured deposits, the injury is already done: the diminution, if not loss, of trust and confidence of the public in the banking system.

In this regard, Section 13 of Republic Act No. 11211 amending Section 30 of the NCBA on the enhancement of recovery and resolution mechanisms to deal with problematic financial institutions presents a timely improvement. Notably, of the seven banks closed during the first semester of 2019, five were when Republic Act No. 11211 took effect. The amendment reads —

105. Lawrence Agcaoili, *BSP orders closure of Lanao del Sur bank*, PHIL. STAR, Feb. 6, 2019, available at <https://www.philstar.com/business/2019/02/06/1891104/bsp-orders-closure-lanao-del-sur-bank> (last accessed Nov. 30, 2019).

106. Julito G. Rada, *BSP closes down Hagonoy rural bank*, MANILA STANDARD, June 2, 2019, available at <http://manilastandard.net/business/banking-report/296266/bsp-closes-down-hagonoy-rural-bank.html> (last accessed Nov. 30, 2019).

107. An Act Establishing the Philippine Deposit Insurance Corporation, Defining its Powers and Duties and for Other Purposes, Republic Act No. 3591 (1963).

108. *Id.* § 5.

109. 3 BANGKO SENTRAL NG PILIPINAS, *BANKING LAWS OF THE PHILIPPINES: THE NEW CENTRAL BANK ACT ANNOTATED 20* (2012).

110. *Cu v. Small Business Guarantee and Finance Corporation*, 834 SCRA 515, 530 (2017).

SECTION. 30. *Proceedings in Receivership and Liquidation.* — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

- (1) has notified the [BSP] or publicly announced a unilateral closure, or has been dormant for at least sixty (60) days or in any manner has suspended the payment of its deposit/deposit substitute liabilities, or is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
- (2) has insufficient realizable assets, as determined by the [BSP], to meet its liabilities; []
- (3) cannot continue in business without involving probable losses to its depositors or creditors; or
- (4) has willfully violated a cease and desist order under Section 37 of this Act that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the [PDIC] as receiver in the case of banks and direct the PDIC to proceed with the liquidation of the closed bank pursuant to this section and the relevant provisions of Republic Act No. 3591, as amended. The Monetary Board shall notify in writing, through the receiver, the board of directors of the closed bank of its decision.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

The authority of the Monetary Board to summarily and without need for prior hearing forbid the bank or quasi-bank from doing business in the Philippines as provided above may also be exercised over non-stock savings and loan associations, based on the same applicable grounds. For quasi-banks and non-stock savings and loan associations, any person of

recognized competence in banking, credit or finance may be designated by the [BSP] as a receiver.¹¹¹

The law on proceedings in receivership and liquidation, whether under the NCBA or the Republic Act No. 11211, is divided into four parts: the placing of the bank under receivership, the receivership, the liquidation, and the judicial review. Of these four, Section 13 of Republic Act No. 11211 touches upon the first two.¹¹² *First*, it adds as grounds for closure and receivership of a bank or quasi-bank the following:

- (1) the notification to BSP or a publicly announced unilateral closure;
- (2) the dormancy for at least 60 days; and
- (3) the suspension of payment in any manner of deposit or deposit substitute liabilities.¹¹³

Second, it altogether repeals portions of Section 30 of the NCBA pertaining to the receiver's duty to determine whether the closed financial institution may be rehabilitated or placed in such condition that it may be permitted to resume business with safety to its depositors and creditors and the general public.¹¹⁴

B. New Grounds for Closure and Receivership

The amendments to the NCBA provided new grounds for closure and receivership, which will be discussed below along with their similarities with the grounds in GBL.

1. Similarity with Section 53 of the GBL

The grounds for closure and receivership added by Republic Act No. 11211 are not exactly novel. The last paragraph of Section 53 of the GBL provides similar grounds for closure and receivership. It reads —

SECTION 53. Other banking services.

...

111. Republic Act No. 11211, § 13.

112. *Id.*

113. *Id.*

114. *Id.*

In case a bank or quasi-bank notifies the [BSP] or publicly announces a bank holiday, or in any manner suspends the payment of its deposit liabilities continuously for more than [30] days, the Monetary Board may summarily and without need for prior hearing close such banking institution and place it under receivership of the [PDIC].¹¹⁵

The first difference between Section 30 of Republic Act No. 11211 and Section 53 of the GBL is that in the former, the notification to the BSP or the public announcement pertains to unilateral closure, while in the latter, to a bank holiday.¹¹⁶ This difference, however, is more in the phraseology than real since a bank or quasi-bank that declares a bank holiday closes itself for business,¹¹⁷ which essentially is tantamount to a unilateral closure.

Another difference is that dormancy for at least 60 days is a ground introduced by Section 30 of Republic Act No. 11211 which is not present in Section 53 of the GBL.¹¹⁸ This ground appears to address situations that fall outside the ambit of the first ground — wherein the bank or quasi-bank does not notify the BSP or publicly announce a unilateral closure, yet its activities or lack thereof amount to a unilateral closure. Effectively, circumvention of the first ground is prevented by this ground. Thus, a bank or quasi-bank that remains dormant for at least 60 days, even without notification to BSP or public announcement of unilateral closure, may be closed and placed under receivership.

Finally, Section 30 of Republic Act No. 11211 repeals the 30-day continuous grace period present in Section 53 of the GBL when the bank and quasi-bank can suspend payment of its deposit and deposit substitute liabilities.¹¹⁹ Hence, as long as the bank or quasi-bank suspends in any manner the payment of its deposit and deposit substitute liabilities, whether the suspension is done in a single day or otherwise, it may now be closed and placed under receivership.

115. General Banking Law of 2000, § 53.

116. Republic Act No. 11211, § 13 & General Banking Law of 2000, § 53.

117.2 BANGKO SENTRAL NG PILIPINAS, BANKING LAWS OF THE PHILIPPINES: THE NEW CENTRAL BANK ACT ANNOTATED 346 (2011).

118. Republic Act No. 11211, § 13 & General Banking Law of 2000, § 53.

119. Republic Act No. 11211, § 20.

2. Implication

The introduction of the new grounds and the collation of all grounds for closure and receivership in Section 30 of the NCBA, as amended by Section 13 of Republic Act No. 11211, lead to no other discernable conclusion of the implied repeal of the portion of Section 53 of the GBL pertaining to such grounds. While implied repeals are frowned upon,¹²⁰ Section 47 of Republic Act No. 11211 allows implied repeals. Not only is Republic Act No. 11211 a latter law — and should, therefore, govern pursuant to the legal maxim *lex posteriori derogate priori*¹²¹ — but also the grounds for closure and receivership it introduced are more restrictive to the banks and other covered institutions and favorable to the public, e.g., the mere suspension of payment in any manner of deposit or deposit substitute liabilities without the need to satisfy the 30-day continuing requirement. Ultimately, if these grounds are to be construed, the construction must be done in order to achieve their purpose, which is enunciated in the State policy of the GBL — promoting and maintaining a stable and efficient banking and financial system that is globally competitive, dynamic, and responsive to the demands of a developing country.¹²² On this matter, Republic Act No. 11211 prevails over the GBL.

3. Grounds Under Section 36 of the NCBA, as Amended by Section 19 of Republic Act No. 11211

Despite the incorporation of the grounds in Section 53 of the GBL to Section 30 of the NCBA, Section 13 of Republic Act No. 11211 fails to include the persistence in conducting business in an unsafe and unsound manner as a ground for closure and receivership, which is found both in Section 36 of the NCBA, as amended by Section 19 of Republic Act No. 11211, and Section 56 of the GBL. The relevant portion of Section 36 of the NCBA, as amended by Section 19 of Republic Act No. 11211, reads —

SECTION 36. Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions.

120. *United Harbor Pilot's Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 391 SCRA 522, 531 (2002).

121. *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, 632 SCRA 422, 441 (2010).

122. General Banking Law of 2000, § 2.

...

Whenever an entity under [BSP] supervision persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.¹²³

Meanwhile, the relevant portion of Section 56 of the GBL reads —

SECTION 56. Conducting Business in an Unsafe and Unsound Manner.

...

Whenever a bank, quasi-bank[,] or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the New Central Bank Act, take action under Section 30 of the same Act and/or immediately exclude the erring bank from clearing, the provisions of law to the contrary notwithstanding.¹²⁴

Both Section 36 of the NCBA, as amended by Section 19 of Republic Act No. 11211, and Section 56 of the GBL include as a ground for closure and receivership the persistence in conducting business in an unsafe and unsound manner. Even prior to its amendment, Section 36 of the NCBA already provides said ground. The most expansive of the three laws is Section 19 of Republic Act No. 11211 because it covers all BSP-supervised entities as opposed to Section 36 of the NCBA which covers only banks and quasi-banks, and Section 56 of the GBL, which covers only banks, quasi-banks, and trust entities.

Nonetheless, despite being left out in the enumeration in Section 30 of the NCBA, as amended by Section 13 of Republic Act No. 11211, the persistence in conducting business in an unsafe and unsound manner must thus be considered a ground for closure and receivership.

C. Receiver's Duty to Rehabilitate Repealed

1. Closed Banks, Quasi-banks, and Non-stock Savings and Loans Association Cannot be Reopened

123. Republic Act No. 11211, § 36.

124. General Banking Law of 2000, § 56.

Section 13 of Republic Act No. 11211 altogether repeals portions of Section 30 of the NCBA pertaining to the receiver's duty to determine, within 90 days from takeover, whether the closed financial institution may be rehabilitated or placed in such condition that it may be permitted to resume business with safety to its depositors and creditors and the general public.¹²⁵ Thus, when a bank, quasi-bank, or non-stock savings and loans association is closed, a receiver is designated — the PDIC in case of banks and any person of recognized competence in banking, credit, or finance in case of quasi-banks and non-stock savings and loans associations — and said receiver is directed to proceed with the liquidation.¹²⁶ “The receiver is bound to gather and take charge of all the assets and liabilities of the financial institution, administer the same for the benefit of the creditors, [] exercise the general powers of a receiver under the Rules of Court,”¹²⁷ and proceed with liquidation. There is thus no longer an opportunity for the receiver to determine whether the closed financial institutions can be rehabilitated, and, as such, they can no longer be reopened.

Notably, the repeal of the receiver's duty to rehabilitate insofar as banks are concerned is already provided in Section 25 of Republic Act No. 10846,¹²⁸ which was passed on 23 May 2016 and which took effect on 11 June 2016, which inserted Section 12 to the PDIC Law. The inserted provision reads —

125. Rehabilitation connotes a reopening or reorganization. “Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.” *Philippine Veterans Bank Employees Union-N.U.B.E. v. Vega*, 360 SCRA 33, 39 (2001) (citing *Ruby Industrial Corporation v. Court of Appeals*, 284 SCRA 445, 460 (1998)).

126. “Liquidation, in corporation law, connotes a winding up or settling with creditors and debtors. It is the winding up of a corporation so that assets are distributed to those entitled to receive them. It is the process of reducing assets to cash, discharging liabilities and dividing surplus or loss.” *Philippine Veterans Bank Employees Union-N.U.B.E.*, 360 SCRA at 39.

127.1 *BANKO SENTRAL NG PILIPINAS*, *supra* note 5, at 141. See also An Act Enhancing the Resolution and Liquidation Framework for Banks, Amending for the Purpose Republic Act No. 3591, as Amended, and Other Related Laws, Republic Act No. 10846, § 26 (2016) (where the powers of the PDIC, as the receiver of a bank, are expressly enumerated).

128. Republic Act No. 10846, § 25.

[SECTION] 12. (a) Whenever a bank is ordered closed by the Monetary Board, the Corporation shall be designated as receiver and it shall proceed with the takeover and liquidation of the closed bank in accordance with this Act. For this purpose, banks closed by the Monetary Board shall no longer be rehabilitated.¹²⁹

Noticeably, the banks closed and placed under liquidation after the effectivity of Republic Act No. 10846 were no longer separately placed under receivership and then under liquidation by separate Monetary Board resolutions. The Monetary Board issues only one resolution directly placing the problematic bank under liquidation.¹³⁰

Remarkably, Section 13 of Republic Act No. 11211 affirmed Section 25 of Republic Act No. 10846 and expanded its coverage to include quasi-banks and non-stock savings and loans associations.¹³¹

2. Implication

The removal of the receiver's duty to determine whether a bank may be rehabilitated equally caused the removal of issues relating to rehabilitation. For instance, in the recent case of *Apex Bancrights Holding, Inc. v. Bangko Sentral ng Pilipinas*,¹³² in an attempt to forestall Export and Industry Bank (EIB)'s liquidation, petitioners therein, the stockholders representing the majority stock of EIB, insisted that the Monetary Board must first make its own independent finding that the EIB could no longer be rehabilitated — instead of merely relying on the findings of the PDIC before ordering the liquidation of a bank.¹³³ The Supreme Court held that “nothing in Section 30 of the NCBA requires the BSP, through the Monetary Board, to make an independent determination of whether a bank may still be rehabilitated or not[;]” when the PDIC, as the receiver, determines that rehabilitation is no longer feasible, the Monetary Board has a two-fold obligation: (i) notify in writing the bank's board of directors of the same; and (ii) direct the PDIC to proceed with liquidation.¹³⁴ Under Section 30 of the NCBA, as amended by

129. *Id.*

130. See Philippine Deposit Insurance Corporation, *supra* note 99.

131. Republic Act No. 11211, § 25.

132. *Apex Bancrights Holdings, Inc. v. Bangko Sentral ng Pilipinas*, 841 SCRA 436 (2017).

133. *Id.* at 447.

134. *Id.*

Section 13 of Republic Act No. 11211, an issue similar to that in *Apex Bancrights Holding, Inc.* will no longer arise, the same being related to the rehabilitation of a bank placed under receivership. In fact, with the repeal of the receiver's duty to rehabilitate, no issues relating to rehabilitation will ever arise.

To reiterate, the foregoing does not preclude the raising of issues related only to receivership. Examples of issues that are independent of rehabilitation include (i) whether the placing of the bank under receivership without prior notice and hearing is valid,¹³⁵ and (ii) whether a suit instituted by the bank placed under receivership can sue on its own without the representation of the PDIC.¹³⁶

3. The Grave Abuse of Discretion Exception

[T]he power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial

135. *See Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 703 SCRA 290 (2013). The Supreme Court held that the “close now, hear later” scheme under Section 30 of the NCBA is justified as a valid exercise of police power as a measure for the protection of the public interest. *Vivas*, 703 SCRA at 309. *See also Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, 602 SCRA 698 (2009).

The Supreme Court held that the “‘close now, hear later’ scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank’s assets and as valid exercise of police power to protect the depositors, creditors, stockholders, and the general public.” *Antonio-Valenzuela*, 602 SCRA at 720.

136. *See Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*, 864 SCRA 32 (2018). The Supreme Court held that as a consequence of the receivership, the closed bank may sue and be sued only through its receiver, the PDIC; any action filed by the closed bank without its receiver may be dismissed. *Banco Filipino Savings and Mortgage Bank*, 864 SCRA at 37. *See also Balayan Bay Rural Bank, Inc. v. National Livelihood Development Corporation*, 771 SCRA 139 (2015). The Supreme Court explained that “[a] bank which had been ordered closed by the Monetary Board retains its juridical personality which can sue and be sued through its liquidator[; t]he only limitation being that the prosecution or defense of the action must be done through the liquidator.” *Balayan Bay Rural Bank, Inc.*, 771 SCRA at 149 (citing *Manalo v. Court of Appeals*, 366 SCRA 752, 764 (2001)).

inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution.¹³⁷

Hence, a closed bank, quasi-bank, or non-stock savings and loans association may be reopened on a single occasion: grave abuse of discretion. While the action of the Monetary Board in closing a bank, quasi-bank, or non-stock savings and loans association without prior notice and hearing is final and executory, the same may be restrained or set aside by the court on petition for certiorari on the ground that the closure was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction, pursuant to the procedure outlined in Section 30 of the NCBA, as amended by Section 13 of Republic Act No. 11211.

This exception already existed even before Republic Act No. 11211 amended the NCBA, and a similar provision was likewise present in the Central Bank Act of 1948, as amended. Thus, in *Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines*,¹³⁸ the Supreme Court, applying the Central Bank Act of 1948, as amended, considered the closure of a bank arbitrary and attended with grave abuse of discretion when it found that the Monetary Board had no sufficient basis to arrive at a sound conclusion of insolvency to justify the closure.¹³⁹ The Supreme Court directed the Monetary Board to reorganize the closed bank and allow the same to resume its business.¹⁴⁰

IV. SECOND KEY AMENDMENT: PROHIBITION ON THE ISSUANCE OF INJUNCTIVE RELIEFS AGAINST THE BSP ACTIONS

A. The No Injunction Rule Against BSP Actions

Injunctive reliefs, which prevent a threatened or continuous injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated, are “resorted to only when there is a pressing necessity to avoid injurious consequences that cannot be redressed under any standard

137. *Apex Bancrights Holdings, Inc.*, 841 SCRA at 445 (citing *Miranda vs. Philippine Deposit Insurance Corporation*, 501 SCRA 288, 297 (2006)).

138. *Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines*, 204 SCRA 767 (1991).

139. *Id.* at 806.

140. *Id.* at 807.

of compensation.”¹⁴¹ To curtail the issuance of these extraordinary remedies prejudices the public, whose only remedy is to resort to the same to temporarily protect its rights *pendente lite*. Any form of curtailment on the issuance of these extraordinary remedies, therefore, must be evaluated with heightened scrutiny.

Section 20 of Republic Act No. 11211 introduces Section 38-A to the NCBA, which reads as follows —

SEC[TION] 38-A. *Issuance of Injunctive Relief Against Bangko Sentral Actions.* No court, other than the Court of Appeals and the Supreme Court, shall issue any temporary restraining order, preliminary injunction[,] or preliminary mandatory injunction against the [BSP] for any action under this Act.

Any restraining order or injunction issued in violation of this section is void and of no force and effect.

The provisions of the Rules of Court on injunctions insofar as these are applicable and not inconsistent with the provisions of this Act shall govern the issuance and dissolution of restraining orders or injunctions against the [BSP].¹⁴²

This new provision, which strengthens and expands the policy of non-interference by the courts of the BSP’s functions, lays down the rule against the issuance of injunctive relief against any action taken by the BSP. With the exception of the Court of Appeals and the Supreme Court, no court shall issue temporary restraining order and preliminary injunction, both prohibitory and mandatory, against BSP actions. If one is to be issued, the pertinent provisions on Rule 58 of the Rules of Court applies whereby the applicant must show the following:

- (5) there exists a clear and unmistakable right to be protected;
- (6) this right is directly threatened by an act sought to be enjoined;
- (7) the invasion of the right is material and substantial; and
- (8) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.¹⁴³

141. *Lim v. Court of Appeals, Twenty-Second Division*, 762 SCRA 172, 182 (2015) (citing *Pahila-Garrido v. Tortogo*, 655 SCRA 553, 575 (2011)).

142. Republic Act No. 11211, § 20.

143. *Cayabyab v. Dimson*, 830 SCRA 520, 528 (2017).

Therefore, generally, all BSP actions are immune from injunctive provisional remedies.

This provision reinforces settled jurisprudence in holding that the Monetary Board of the BSP is a quasi-judicial agency exercising quasi-judicial functions.¹⁴⁴ The Monetary Board of the BSP is an independent central monetary authority and, likewise, a body corporate with fiscal and administrative autonomy, possessing the powers to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason, to administer oaths and compel presentation of books, records, and other documents needed in its examination, to impose fines and other sanctions, and to issue cease and desist orders.¹⁴⁵ In particular, Section 37 of the NCBA, now amended by Section 19 of Republic Act No. 11211, explicitly provides that the Monetary Board of the BSP shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the Monetary Board of the BSP must conduct some form of investigation or hearing regarding the same.¹⁴⁶

Truly, in performing quasi-judicial functions, the Monetary Board of the BSP investigates facts or ascertains their existence, holds hearings, and draws conclusions from them, as a basis for its official action and to exercise discretion of a judicial nature. Notwithstanding that nothing in the NCBA or the GBL explicitly allows an appeal of the decisions of the Monetary Board of the BSP to the Court of Appeals,¹⁴⁷ the final judgments, orders, resolutions, or awards of the Monetary Board of the BSP are, nevertheless, appealable to the Court of Appeals pursuant to Section 9 (3) of Batas Pambansa Blg. 129,¹⁴⁸ as amended, in relation to Section 1, Rule 43 of the Rules of Court. Correlatively, an application for injunctive relief, being a

144. *The Honorable Monetary Board v. Philippine Veterans Bank*, 746 SCRA 508, 517 (2015).

145. *Id.* at 518 (citing *United Coconut Planters Bank v. E. Ganzon, Inc.*, 591 SCRA 321, 338 (2009)).

146. *Id.*

147. *United Coconut Planters Bank*, 591 SCRA at 337.

148. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes [The Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129, § 9 (3) (1980).

provisional remedy, must be made with the Court of Appeals where the case is pending.¹⁴⁹

To illustrate, the judicial review of the decisions of the Monetary Board of the BSP placing the problematic banks under receivership and liquidation pursuant to Section 30 of the NCBA, as amended by Section 13 of Republic Act No. 11211, must be commenced with the Court of Appeals. The provision allows the stockholders of record representing the majority of the capital stock to assail via petition for certiorari within 10 days from receipt by the board of directors placing the problematic bank under receivership or liquidation. While the provision states that the actions of the Monetary Board may not be restrained or set aside by the court except on petition for certiorari, it is silent on what court it refers to. In clarifying the matter, the Supreme Court has held that “any petition for *certiorari* against an act or omission of the [BSP], when it acts through the Monetary Board, must be filed with the Court of Appeals.”¹⁵⁰

Notably, while under the cited provision, the Supreme Court has concurrent jurisdiction with the Court of Appeals to issue the injunctive reliefs, the same must conform with the principle of judicial hierarchy. Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the Court of Appeals and the Supreme Court, the special action for the obtainment of such writ must be presented with the Court of Appeals.¹⁵¹ Furthermore —

As a rule, the Supreme Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction. The judicial policy must be observed to

149. *See* Sangguniang Panlungsod ng Baguio City v. Jadewell Parking Systems Corporation, 723 SCRA 350, 398 (2016). The Supreme Court held that “the provisional or ancillary remedy of preliminary injunction cannot exist except only as part or an incident of an independent action or proceeding.” *Id.*

150. *Banco Filipino Savings and Mortgage Bank*, 864 SCRA at 67.

151. *See* Belmonte v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, 780 SCRA 483, 496 (2016).

prevent an imposition on the precious time and attention of the [Supreme] Court.¹⁵²

To reiterate, as provisional remedy, the injunctive relief must be applied with the pending principal action.

Verily, “where the decisions of certain administrative bodies are appealable to the Court of Appeals, these adjudicative bodies are co-equal with the Regional Trial Courts in terms of rank and stature; their actions are logically beyond their control.”¹⁵³ Since the Monetary Board is an administrative agency performing quasi-judicial functions, it is co-equal with the Regional Trial Courts. Thus, consistent with Section 38-A of the NCBA, only the superior courts, i.e., the Court of Appeals and the Supreme Court, following the principle of judicial hierarchy, can issue injunctive reliefs against BSP actions.

B. Exceptions Found in the NCBA, as Amended by Republic Act No. 11211

Insofar as it allows only the Court of Appeals and Supreme Court to issue injunctive provisional remedies, Section 38-A of the NCBA is not absolute. The provision has to yield, however, to other provisions of the NCBA, as amended by Republic Act No. 11211, which prescribe the manners of securing injunctive provisional remedies for certain BSP actions. These provisions are Sections 25 and 88-B of the NCBA, as amended by Republic Act No. 11211.

1. First Exception: Section 25 of the NCBA, as Amended by Section 8 of Republic Act No. 11211

Section 25 of the NCBA, as amended by Section 8 of Republic Act No. 11211, authorizes the issuance of a restraining order or injunction to restrain BSP’s exercise of examination powers only if there is convincing proof that its actions are plainly arbitrary and made in bad faith, the petitioner or plaintiff files with the clerk or judge of the court in which the action is

152. *Belmonte*, 780 SCRA at 496 (citing *Vivas*, 703 SCRA at 304).

153. *Department of the Interior and Local Government v. Gatuz*, 772 SCRA 383, 390 (2015) (citing *Springfield Development Corporation, Inc. v. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City*, 514 SCRA 326, 332 (2007); *Board of Commissioners v. Dela Rosa*, 1191; 197 SCRA 853, 873 (1991); & *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 171 SCRA 348, 360 (1989)).

pending a bond executed in favor of BSP in an amount to be fixed by the court. A relevant portion of the provision reads —

SECTION. 25. Supervision and Examination.

...

No restraining order or injunction shall be issued by the court enjoining the [BSP] from examining any institution subject to supervision or examination by the [BSP], unless there is convincing proof that the action of the [BSP] is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the [BSP], in an amount to be fixed by the court. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this section.¹⁵⁴

This provision contemplates a scenario where a supervised financial institution files a case in court to prevent said institution from being subject to BSP's examination and applies injunctive reliefs as provisional remedies before the court in which said action is pending. An action to restrain or prevent BSP's examination must necessarily be one for injunction,¹⁵⁵ which, being incapable of pecuniary estimation, is cognizable by the Regional Trial Court under Section 19 (1) of *Batas Pambansa Blg. 129*, as amended. Consequently, being ancillary remedies, provisional remedies consisting of injunctive reliefs, such as temporary restraining order or preliminary injunction, may be filed in the Regional Trial Court where the case is pending following the requirements under Rule 58 of the Rules of Court and, in addition, establishing convincing proof that BSP's examination is plainly arbitrary and made in bad faith and the filing of a bond, the amount of which is fixed by said Court, executed in favor of BSP.

2. Second Exception: Section 88-B of the NCBA, Introduced by Section 32 of Republic Act No. 11211

Section 88-B of the NCBA, introduced by Section 32 of Republic Act No. 11211, authorizes the issuance of restraining order or injunction to restrain BSP's foreclosure of mortgages, which BSP acquired through rediscounting or otherwise pursuant to its credit operations,¹⁵⁶ only if a bond is posted in

154. Republic Act No. 7653, § 25.

155. *Concorde Condominium, Inc. v. Baculio*, 784 SCRA 263, 275 (2016).

156. Republic Act No. 11211, § 32.

favor of BSP in an amount equivalent to the total claim of BSP. The relevant portion of the provision reads —

Section 88-B. Deputation of Legal Staff in Case of Foreclosures.

...

No restraining order or injunction shall be issued by the court enjoining the [BSP] from proceeding with the foreclosure of the mortgage unless a bond is posted in favor of the [BSP] in an amount equivalent to the total claim of the [BSP]. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the [BSP] of a bond, which shall be in the form of a [BSP] check, in an amount twice the amount of the original bond posted conditioned that the [BSP] will pay the damages which the party may suffer by the refusal or dissolution of the injunction. The provisions of the Rules of Court on injunctions insofar as they are applicable and not inconsistent with the provisions of this section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this section.¹⁵⁷

This provision envisions a situation where, when the BSP files an action for foreclosure of mortgage, either judicial or extrajudicial, an interested party, such as the owner of the property subject of the mortgage, files an action to restrain it by questioning the validity of the foreclosure proceedings, the contract of mortgage or even the principal contract (usually a loan) of which the contract of mortgage is a security. If the BSP files an action for judicial foreclosure of mortgage with the Regional Trial Court pursuant to Rule 68 of the Rules of Court, the action to restrain the same must be filed with the Court of Appeals, through special civil actions, following the principle of hierarchy of courts; correspondingly, Section 38-A of the NCBA, as amended by Republic Act No. 11211, applies insofar as the issuance of injunctive reliefs is concerned. If the foreclosure is extrajudicial, however, the action to restrain it must be filed with the Regional Trial Court, it being in the nature of an action for injunction, which is incapable of pecuniary estimation. Similar actions with the same aim of restraining the extrajudicial foreclosure, such as annulment of foreclosure documents, are necessarily incapable of pecuniary estimation, and, thus, likewise fall under the jurisdiction of the Regional Trial Court. Being ancillary remedies, provisional remedies consisting of injunctive reliefs must be filed in the Regional Trial Court where the case questioning the extrajudicial foreclosure is pending.

¹⁵⁷. *Id.*

The requirement of posting a bond in an amount equivalent to the total claim of BSP under Section 88-B of the NCBA is consistent with item 4 of A.M. No. 99-10-05-0 dated 20 February 2007 entitled *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages* issued by the Supreme Court, to wit —

Acting on the recommendation of the Committee on Revision of the Rules of Court, the Court RESOLVED to adopt the following additional rules with respect to Extrajudicial or Judicial Foreclosure of Real Estate Mortgages:

...

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order.¹⁵⁸

3. Implication

The no injunction rule covers all the BSP actions under the NCBA, as amended by Republic Act No. 11211. While settled jurisprudence seemingly affirms such rule, a scrupulous review thereof shows that Section 38-A of the NCBA, introduced by Section 20 of Republic Act No. 11211 is consistent insofar as the BSP acts, through the Monetary Board, in the performance of quasi-judicial functions. The BSP's actions, however, are not limited to the exercise of quasi-judicial functions. As an administrative agency, the BSP "likewise exercises powers and functions which may be characterized as administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of these five, as may be conferred by the Constitution or by statute."¹⁵⁹

Evidently, the BSP's actions sought to be restrained under the exceptions discussed — Sections 25 and 88-B of the NCBA, as amended by Republic Act No. 11211 — are in the exercise not of its quasi-judicial functions but of its regulatory functions, with the former relating to the supervision of

158. Office of the Court Administrator, *Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages*, OCA Circular No. 25-2007 (Feb. 27, 2007).

159. *Banco Filipino Savings and Mortgage Bank*, 864 SCRA at 66 (citing *Bank of Commerce*, 681 SCRA at 556).

financial entities and the latter pertaining to a necessary consequence of BSP's credit operations. Moreover, neither of these are done by the BSP acting through the Monetary Board. Since only the final judgments, orders, resolutions, or awards of the BSP, in the exercise of its quasi-judicial powers, are appealable to the Court of Appeals, assailing the actions taken under these two provisions, which are made in the exercise of regulatory functions, are properly cognizable by the Regional Trial Court, including ancillary injunctive reliefs applied therewith.

Hence, the pressing matter to resolve is, when the BSP performs functions which are administrative, investigatory, regulatory, or quasi-legislative, should the main action to assail the same and any injunctive relief applied therewith be filed with the Court of Appeals or the Supreme Court? Based on Section 38-A of the NCBA, as amended by Republic Act No. 11211, only the Court of Appeals or the Supreme Court has the power to issue temporary restraining order or preliminary injunction for any action of the BSP taken under its amended charter.

Notwithstanding the plain language of Section 38-A of the NCBA, as amended by Republic Act No. 11211, the better view is to limit the application thereof to the actions of the BSP acting through the Monetary Board in the exercise of quasi-judicial functions where judicial review thereof is lodged with the Court of Appeals or the Supreme Court.¹⁶⁰ Following this, the language of the provision "against the [BSP] for any action under this Act," would be consistent had it been rephrased "against any action of the *Monetary Board* of the [BSP] under this Act." Needless to say, where the BSP acts not in the exercise of its quasi-judicial functions, the existing remedies to assail the same must be resorted to. For example, when what is being assailed is the validity or constitutionality of a rule or regulation issued by the BSP in the performance of its quasi-legislative functions,¹⁶¹ then the Regional Trial Court has the jurisdiction to pass upon the same as the determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the Constitution is

160. *Banco Filipino Savings and Mortgage Bank*, 864 SCRA at 67.

161. See, e.g., NCBA, § 15 (a). It provides that "in the exercise of its authority, the Monetary Board shall issue rules and regulations it considers necessary for the effective discharge of the responsibilities and exercise of the powers vested upon the Monetary Board and the Bangko Sentral [ng Pilipinas (BSP)]." NCBA, § 15 (a).

within the jurisdiction of the Regional Trial Court via a petition for declaratory relief under Rule 63 of the Rules of Court.¹⁶²

C. Possible Constitutional Challenge

The power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs to the Supreme Court,¹⁶³ to the exclusion of the Executive and Legislative departments.¹⁶⁴ While under the 1935 and 1973 Constitutions, this rule-making power had been previously subjected to a power-sharing scheme with Congress, “[a]s it now stands, the 1987 Constitution textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Supreme Court’s rule-making power, in line with the framers’ vision of institutionalizing a ‘[s]tronger and more independent judiciary.’”¹⁶⁵ Indeed, this power was granted by the 1987 Constitution to the Supreme Court to enhance its independence, for, in the words of Justice Isagani Cruz, “without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice.”¹⁶⁶

Thus, in several instances, the Supreme Court rejected attempts on the part of Congress, in the exercise of its legislative powers, to amend the Rules of Court promulgated by the Supreme Court in its exercise of rule-making power. In *Fabian v. Desierto*,¹⁶⁷ the appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under Rule 43 of the Rules of Court instead of appeal by certiorari under Rule 45 as provided in Section 27 of Republic Act No.

162. *The Chairman and Executive Director, Palawan Council for Sustainable Development v. Lim*, 801 SCRA 304, 313 (2016).

163. PHIL. CONST. art. VII, § 5 (5).

164. *Estipona, Jr. v. Lobrigo*, 837 SCRA 160, 174 (2017) (citing *Echegaray v. Secretary of Justice*, 301 SCRA 96, 112 (1999)).

165. *Estipona, Jr.*, 837 SCRA at 178 (citing *Carpio-Morales v. Court of Appeals (Sixth Division)*, 774 SCRA 431, 507 (1999)).

166. *Estipona, Jr.*, 837 SCRA at 174 (citing *Echegaray*, 301 SCRA at 112).

167. *Fabian v. Desierto*, 295 SCRA 470 (1998).

6770.¹⁶⁸ In *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.*,¹⁶⁹ the Cooperative Code provision on notices cannot replace the rules on summons under Rule 14 of the Rules of Court.¹⁷⁰ In *Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees*,¹⁷¹ despite statutory provision, the Government Service Insurance System is held not exempt from the payment of legal fees imposed by Rule 141 of the Rules of Court.¹⁵¹ In *Carpio-Morales v. Court of Appeals (Sixth Division)*,¹⁷² the first paragraph of Section 14 of Republic Act No. 6770, which prohibits courts, except the Supreme Court, from issuing injunctive reliefs to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the Rules of Court.¹⁷³ Finally, in *Estipona, Jr. v. Lobrigo*,¹⁷⁴ Section 23 of Republic Act No. 9165¹⁷⁵ prohibiting any person charged with violation of said law to enter into plea bargaining is unconstitutional as it violates the provisions of the Rules of Court on plea bargaining.¹⁷⁶

In this wise, Section 38-A of the NCBA, as amended by Republic Act No. 11211, which regulates the issuance of provisional injunctive reliefs

168. *Id.* at 480. See also An Act to Provide for The Appointment of An Ombudsman and to Define the Functions and Powers of That Office [Ombudsman Act of 1989], Republic Act 6770, § 27 (1989).

169. *Cathay Metal Corporation v. Laguna West Multi-Purpose Corporation Inc.*, 728 SCRA 482 (2014).

170. *Id.* at 487 (2014).

171. *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*, 612 SCRA 193 (2010).

151. *Id.* at 200.

172. *Carpio-Morales v. Court of Appeals (Sixth Division)*, 774 SCRA 431 (2015).

173. *Id.* at 490.

174. *Estipona, Jr. v. Lobrigo*, 837 SCRA 160 (2017).

175. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, And for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act 9165, § 23 (2002).

176. *Estipona, Jr.*, 837 SCRA at 169.

against BSP actions, may suffer similar fate. *Carpio-Morales*, which also dealt with a legislated provision involving injunctive reliefs, aptly explained why these injunctive reliefs intrude the Supreme Court's rule-making power, *viz.*

Under its rule-making authority, the Court has periodically passed various rules of procedure, among others, the current 1997 Rules of Civil Procedure. Identifying the appropriate procedural remedies needed for the reasonable exercise of every court's judicial power, the provisional remedies of temporary restraining orders and writs of preliminary injunction were thus provided.

A temporary restraining order and a writ of preliminary injunction both constitute temporary measures availed of during the pendency of the action. They are, by nature, ancillary because they are mere incidents in and are dependent upon the result of the main action. It is well-settled that the *sole object of a temporary restraining order or a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo* until the merits of the case can be heard. They are usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case. In other words, they are preservative remedies for the protection of substantive rights or interests, and, hence, not a cause of action in itself, but merely adjunct to a main suit. In a sense, they are regulatory processes meant to prevent a case from being mooted by the interim acts of the parties.

Rule 58 of the 1997 Rules of Civil Procedure generally governs the provisional remedies of a TRO and a WPI. A preliminary injunction is defined under Section 1, Rule 58, while Section 3 of the same Rule enumerates the grounds for its issuance. Meanwhile, under Section 5 thereof, a TRO may be issued as a precursor to the issuance of a writ of preliminary injunction under certain procedural parameters.

The power of a court to issue these provisional injunctive reliefs coincides with its *inherent power to issue all auxiliary writs, processes, and other means necessary to carry its acquired jurisdiction into effect under Section 6, Rule 135 of the Rules of Court ...*¹⁵⁵

Clearly, the Supreme Court elucidated that the injunctive reliefs of temporary restraining order and writ of preliminary injunction are mere incidents and dependent upon the result of the main action, with the purpose of preserving the status quo until the merits of the case can be heard.

155. *Carpio-Morales*, 774 SCRA at 508-11.

They are preservative remedies which functions as a protection of substantive rights or interests to prevent the case from being mooted by the interim acts of the parties. Their issuance is part of the procedure of the court in the exercise of judicial functions, which falls within the ambit of the rule-making power of the Supreme Court.

While it is true that every law has in its favor the presumption of constitutionality — “unless and until a specific provision of law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes”¹⁷⁷ — nonetheless, taking this into consideration and the apparent inconsistency with Section 38-A of NCBA, as amended by Republic Act No. 11211, with prevailing jurisprudence insofar as its application to the BSP’s exercise of functions, other than quasi-judicial, as discussed above, this provision stands on a constitutionally shaky ground.

Even so, all is not lost. Time and again, the Supreme Court has given its judicial imprimatur for legislated provisions involving injunctive reliefs. For instance, in *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*,¹⁷⁸ the Supreme Court, acknowledging the inflexible policy that taxes, being the lifeblood of the government, should be collected promptly and without hindrance or delay, recognized the general rule under Section 218 of the National Internal Revenue Code (NIRC) that “no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charged imposed by said [Code].”¹⁷⁹ This is subject to the exception under Section 11 of Republic Act No. 1125, as amended, where the immediately executory decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their liabilities, shall not be suspended by any appeal thereof to the Court of Tax Appeals

‘unless in the opinion of the Court, the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the

177. *Secretary of the Department of Transportation and Communications v. Mabalot*, 378 SCRA 128, 138 (2002) (citing *Larin v. Executive Secretary*, 280 SCRA 713, 730 (1997)).

178. *Commissioner of Internal Revenue v. Standard Insurance Co. Inc.*, G.R. No. 219340, Nov. 7, 2018, available at <http://sc.judiciary.gov.ph/3064> (last accessed Nov. 30, 2019).

179. *Id.* at **4-5 (citing *Angeles City v. Angeles Electric Corporation*, 622 SCRA 43, 52 (2010)).

interest of the Government and/or the taxpayer,' in which case, the Court of Tax Appeals 'at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount.'¹⁸⁰

Also, in *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*,¹⁸¹ the Supreme Court upheld Section 3 of Republic Act No. 8975, which prohibits any court, except the Supreme Court to issue any temporary restraining order and preliminary injunction against the government or any person acting under the government's discretion in cases involving government infrastructure projects.¹⁸² The Supreme Court adhered to the policy behind the prohibition under Republic Act No. 8975 — to “ensure the expeditious and efficient implementation and completion of government infrastructure projects to avoid unnecessary increase in construction, maintenance and repair costs and to immediately enjoy the social and economic benefits therefrom”¹⁸³ — and even issued Administrative Circular No. 11-2000 entitled *Re: Ban on the Issuance of Temporary Restraining Orders or Writs of Preliminary Prohibitory or Mandatory Injunctions in Cases Involving Government Infrastructure Projects*, enjoining the lower court judges to strictly comply with Republic Act No. 8975.¹⁸⁴

In fact, in *Carpio-Morales*, the Supreme Court did not totally close the door to the constitutionally defective first paragraph of Section 14 of Republic Act No. 6770, which prohibits courts, except the Supreme Court, from issuing injunctive reliefs to enjoin an investigation conducted by the Ombudsman.¹⁸⁵ The Supreme Court declared the same ineffective until it

180. *Commissioner of Internal Revenue*, G.R. No. 219340, at *5.

181. *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*, 669 SCRA 173 (2012).

182. *Id.* at 182-84.

183. An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes, Republic Act No. 8975, § 1 (2000).

184. *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero*, 755 SCRA 90, 112-13 (2015).

185. *Carpio-Morales*, 774 SCRA at 557-58.

adopts the same as part of the rules of procedure through an administrative circular duly issued therefor.¹⁸⁶

Hence, from the foregoing discussion, it can be gathered that Section 38-A of the NCBA, as amended by Republic Act No. 11211, insofar as it regulates the issuance of provisional injunctive reliefs against BSP actions, while presumed constitutional, apparently suffers from constitutional infirmities and may be declared unconstitutional, unless otherwise adopted by the Supreme Court.

V. THIRD KEY AMENDMENT: RESTORATION OF TAX EXEMPTION ON ALL INCOME DERIVED FROM GOVERNMENTAL FUNCTIONS

One of the amendments that has a significant implication on the BSP's internal operations is the restoration of tax exemption on all income derived from governmental functions. While there is no prohibition against the government taxing itself,¹⁸⁷ a practical effect of an exemption is “merely to reduce the amount of money that has to be handled by government in the course of its operations.”¹⁸⁸ Particularly, there is also “no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another[.]” more so where the local governments “tax national government instrumentalities for rendering essential public services to inhabitants of local governments.”¹⁸⁹ These considerations were taken into account when the NCBA was enacted in 1993, as can be gleaned from Section 125 thereof granting the BSP tax exemptions, *viz.* —

SEC[TION] 125. *Tax Exemptions.* – The [BSP] shall be exempt for a period of five [] years from the approval of this Act from all national, provincial, municipal and city taxes, fees, charges[,] and assessments.

The exemption authorized in the preceding paragraph of this section shall apply to all property of the [BSP], to the resources, receipts, expenditures, profits and income of the [BSP], as well as to all contracts, deeds, documents and transactions related to the conduct of the business of the [BSP]: *Provided*, however, That said exemptions shall apply only to such taxes, fees, charges and assessments for which the [BSP] itself would

186. *Id.*

187. *Manila International Airport Authority v. Court of Appeals*, 495 SCRA 591, 705 (2006).

188. *Maceda vs. Macaraig, Jr.*, 197 SCRA 771, 799 (1991).

189. *Manila International Airport Authority*, 495 SCRA at 620.

otherwise be liable, and shall not apply to taxes, fees, charges, or assessments payable by persons or other entities doing business with the [BSP]: *Provided*, further, That foreign loans and other obligations of the [BSP] shall be exempt, both as to the principal and interest, from any and all taxes if the payment of such taxes has been assumed by the [BSP].¹⁹⁰

The tax exemption, however, is only for a period of five years from the approval of the NCBA.¹⁹¹ Since its expiration in 1998, the BSP has been subjected to all taxes. To recall, BSP has been remitting 75% of its net profits as dividends to the national government,¹⁹² without provision on sharing of losses. Despite its mandatory remittance of the net profits, the BSP has still to pay taxes, even for those functions that are governmental in nature or done in pursuit of its constitutional and legislative decrees. In fact, the BSP has paid ₱154 Billion in dividends and taxes to the national government since its creation in 1993.¹⁹³ Had it truly been the intention of the Congress to transfer funds from the BSP to the national government, it should have chosen, for practicality and convenience, one mode of transfer: either through remittance of net profits as dividends or through taxation. Truly, the imposition and levy of taxes on the BSP restricts, to a certain extent, the actions it can take to comply with its constitutional mandate and legislative objectives under the NCBA. The restoration of its tax exemptions on income derived from governmental functions thus is a welcome development.

Section 44 of Republic Act No. 11211 amended Section 125 of the NCBA to read as follows —

SEC[TION] 125. *Tax Exemptions.* – The [BSP] shall be exempt from all national, provincial, municipal and city taxes on income derived from its governmental functions, specifically:

- (a) income from its activities or transactions in the exercise of its supervision over the operations of banks and its regulatory and examination powers over non-bank financial institutions performing

190. Republic Act No. 7653, § 125.

191. *Id.* But see 1 BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 346 (where it is opined that the phrase “from approval of this Act” should be interpreted to mean “from the effectivity of Republic Act No. 7653;” otherwise, it would run counter to Section 138 of the NCBA providing the effectivity clause and the New Civil Code).

192. Republic Act No. 7653, § 132 (b).

193. Bangko Sentral ng Pilipinas, *supra* note 33, at *3.

quasi-banking functions, money service businesses, credit granting businesses[,] and payment system operators; and

- (b) income in pursuit of its primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy, and the promotion and maintenance of monetary and financial stability and the convertibility of the peso.

All other incomes not included in the above enumeration shall be considered as proprietary income and shall be subject to all taxes, charges, fees[,] and assessments.¹⁹⁴

This provision partly restores the tax exemptions previously granted thereunder. Considering that the BSP's operations are guided not by profit considerations but by its mandate of the promotion of price stability, the amendatory provision clearly reinstates the BSP's tax exemptions on income derived from its governmental functions.

To put into context and to illustrate, the BSP has a number of monetary policy instruments at its disposal to promote price stability.¹⁹⁵ Some of them, such as the credit operations and the open market operations, while aimed at a monetary policy objective, may incidentally produce income. In credit operations, the BSP "lends out to banks through rediscounting, discounting, loans[,] or advances knowing that these will influence the volume of credit consistent with the objective of price stability or control of domestic inflation."¹⁹⁶ The BSP also

grants loans or advances to banking institutions in precarious financial condition or under serious financial pressures, subject to certain conditions. When availing of the loan facilities of the BSP, private banks assign to the BSP their receivables including the collaterals[;] [u]pon failure of these banks or their borrowers to pay their loans, the BSP forecloses these real properties. Banks also pay their loans with properties under a *dacion en pago* agreement.¹⁹⁷

194. Republic Act No. 11211, § 44.

195. See, e.g., Republic Act No. 7653, §§ 68; 69-75; 76-80; 81-89; 90-92; 94-10; & 104-108.

196. I BANKO SENTRAL NG PILIPINAS, *supra* note 5, at 287.

197. Bangko Sentral ng Pilipinas, Overview: Loans, Credit and Asset Management, available at <http://www.bsp.gov.ph/loans/overview.asp> (last accessed Nov. 30, 2019).

Meanwhile,

[o]pen market operation is a monetary tool where the BSP publicly buys or sells government securities from (or to) banks and financial institutions in order to expand or contract the supply of money. By controlling the money supply, the BSP is able to exert some influence on the prices of goods and services and achieve its inflation objectives.¹⁹⁸

In credit operations, the BSP may incidentally profit from the interests on the loans received or the increase in the value of the properties acquired by it; while in open market operations, BSP may incidentally profit from the interests accrued and the appreciation of the value of the government securities.

Hence, the restoration of the tax exemption on all income derived from governmental functions, such as those monetary policy instruments, like the credit operations and the open market operation, in the pursuit of its primary objective of price stability, essentially removes the strain on the monetary policy, which should always remain flexible to address the changes in the economy.

While the provision cites examples of exempt income, such as those arising from BSP's supervision of banks and regulation of non-bank financial institutions and those in pursuit of its primary objective to maintain price stability, these examples themselves are not specific but broad. "Because taxes are the lifeblood of the nation, courts have always applied the doctrine of strict interpretation in construing tax exemption[;] [a] claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken."¹⁹⁹ And, even if, generally, provisions granting exemptions to government agencies may be construed liberally, in favor of non-taxability of such agencies,²⁰⁰ there being no specific exempted income in Section 125 of the NCBA, as amended by Section 44 of Republic Act No. 11211, the BSP is burdened to prove that the income it claims to be tax exempt is derived from its governmental functions.

A. Other Laws Granting BSP Tax Exemptions

198. *Bank of Commerce*, 681 SCRA at 561.

199. *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*, 576 SCRA 645, 652 (2009).

200. *Maceda*, 197 SCRA at 773.

Apart from Section 125 of the NCBA, as amended by Section 44 of Republic Act No. 11211, Section 126 of the NCBA and Section 199 (l) of Republic Act No. 8424,²⁰¹ as amended by Republic Act No. 9243,²⁰² provide additional tax exemptions for the BSP. Section 126 of the NCBA²⁰³ exempts from all customs duties and consular fees and from all other taxes, assessments, and charges the importation and exportation of BSP of notes and coins, and of gold and other metals to be used for purposes in accordance with the NCBA, and the importation of all equipment needed for bank note production, minting of coins, metal refining, and other security printing operations. Section 86 (m) of Republic Act No. 10963, however, partly repealed this provision insofar as the value-added tax exemption is concerned.²⁰⁴

201. An Act Amending The National Internal Revenue Code, As Amended, and For Other Purposes [Tax Reform Act of 1997], Republic Act No. 8424, § 199 (l) (1997).

202. An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes, Republic Act No. 9243 (2003).

203. Section 126 provides —

[SECTION] 126. Exemption from Customs Duties. – The provision of any general or special law to the contrary notwithstanding, the importation and exportation of [BSP] of notes and coins, and of gold and other metals to be used for purposes authorized under this Act, and the importation of all equipment needed for bank note production, minting of coins, metal refining[,] and other security printing operations shall be fully exempt from all customs duties and consular fees and from all other taxes, assessments[,] and charges related to such importation or exportation.

Republic Act No. 7653, § 126.

204. An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes [Tax Reform for

Meanwhile, Section 199 (l) of Republic Act No. 8424,²⁰⁵ as amended by Republic Act No. 9243,²⁰⁶ exempts from documentary stamp tax all contracts, deeds, documents, and transactions related to the conduct of business of the BSP.

B. Tax Exemption Confirmed by Jurisprudence

Notwithstanding that the exemption of the BSP from real property tax has expired in 1998 pursuant to the original provision of Section 125 of the NCBA and that Republic Act No. 11211 does not specifically restore the same, the real properties of BSP are still exempt from real property tax following Sections 133 (o) and 234 (a) of the Republic Act No. 7160 or the Local Government Code (LGC). The provisions read —

[SECTION] 133. *Common Limitations on the Taxing Powers of the Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

...

(o) Taxes, fees[,] or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units.

...

[SECTION] 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

Acceleration and Inclusion (TRAIN)], Republic Act No. 10963, § 86 (m) (2017).

205. Tax Reform Act of 1997, § 199 (l).

206. Section 199 provides —

[SECTION] 199. *Documents and Papers Not Subject to Stamp Tax.* – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

...

(l) All contracts, deeds, documents[,] and transactions related to the conduct of business of the [BSP].

Id.

Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.²⁰⁷

The Supreme Court further explained that

Section 133 (o) of the LGC recognizes the fundamental principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power 'subject to such guidelines and limitations as the Congress may provide.'²⁰⁸

Complementing this section is Section 234 (a) of the same Code, which provides that, unless the beneficial use thereof has been granted to a taxable person, real property owned by the Republic of the Philippines is exempt from real property tax. Therefore, the real properties of BSP, which is a government instrumentality, are owned by the Republic, and, as such, are exempt from real property taxation.

Under Section 1 of the NCBA, the BSP appears to be “a government-owned corporation,” and, accordingly, subject of real property taxes under Section 193 of the LGC, which withdraws real property tax exemption of government-owned and controlled corporations.²⁰⁹ Apart from this imprecise, if not totally erroneous, provision characterizing it as a corporation, BSP, however, is not a government-owned or controlled corporation as it is, in the first place, not a corporation, either stock or non-stock.

The BSP is neither a stock nor a non-stock corporation. Section 3 of Republic Act. No. 11232 or the Revised Corporation Code (RCC) defines a stock corporation as one which “[has] capital stock divided into shares and [is] authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held.”²¹⁰ BSP has

207. An Act Providing for a Local Government Code of 1991 [Local Government Code of 1991], Republic Act No. 7160, §§ 133 (o) & 234 (1991).

208. *Manila International Airport Authority*, 495 SCRA at 619 (citing PHIL. CONST. art. X, § 5).

209. Republic Act No. 7653, § 1.

210. An Act Providing for the Revised Corporation Code of the Philippines [REV. CORP. CODE], Republic Act No. 11232, § 3 (2019).

capital but is not divided into shares of stock. It has no stockholders or voting shares. Section 2 of the NCBA, as amended by Republic Act No. 11211, merely provides that it is a *body corporate* whose capital is to be fully subscribed by the Government. Hence, the BSP is not a stock corporation.

The BSP is also not a non-stock corporation because it has no members. Section 86 of the RCC defines a non-stock corporation as “one where no part of its income is distributable as dividends to its members, trustees, or officers.”²¹¹ Non-stock corporations must have members. Assuming that the government is considered as the sole member, this cannot make BSP a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 44 of the NCBA mandates it to revert 50% of its net profits back to the National Treasury. This prevents the BSP from qualifying as a non-stock corporation.

Not being either a stock or non-stock corporation, the BSP cannot be considered a government-owned and controlled corporation, much less a corporation. In *Manila International Airport Authority v. Court of Appeals*,²¹² the Supreme Court decreed that the BSP is a government instrumentality, *viz.*

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and [BSP]. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.¹⁸⁶

211. *Id.* § 86.

212. *Manila International Airport Authority v. Court of Appeals*, 495 SCRA 591 (2006).

186. *Republic v. City of Parañaque*, 677 SCRA 246, 256 (2012) (citing *Manila International Airport Authority*, 495 SCRA at 618-19).

As the BSP is a government instrumentality, its real properties, which are owned by the Republic, are exempt from real property taxes as provided under Section 133 (o) in relation to Section 234 (a) of the LGC.

This real property tax exemption has enormous operational and financial implications for the BSP. Note that the BSP has offices across the Philippines: its main office in Manila, the Security Plant Complex in Quezon City, three Regional Offices located in La Union, Cebu, and Davao, and eight branches located in Luzon, five in Visayas, and six in Mindanao. The BSP also has a training facility located in Silang, Cavite and owns the Philippine International Convention Center. More importantly, real properties acquired by the BSP through *dacion en pago* or foreclosure of mortgages pursuant to its credit operations are rightfully included the exemption so long as they are in BSP's name. The enforcement of this tax exemption leads to the BSP saving millions of pesos, if not hundreds of millions, annually.

VI. CONCLUSION

The law on central banking does not operate in isolation. From the Central Bank Act of 1948 and its amendments to the NCBA and its recent amendment, Republic Act No. 11211, the legal framework of central banking has evolved throughout the times in response to the ever-changing needs of the economy. The NCBA expresses the BSP's legislative mandate of maintaining price stability conducive to a balanced and stable growth of the economy, and of promoting and maintaining monetary stability and convertibility of the peso, pursuant to the constitutional fiat of providing policy direction in the areas of money, banking, and financial supervision over the operation of banks and other finance companies. In view of the developments that transpired since the effectivity of the NCBA, the amendments introduced by Republic Act No. 11211 expands, clarifies, and strengthens the BSP's monetary stability functions, financial stability and prudential supervision functions, and corporate and financial viability to make it attune to address these developments.

Republic Act No. 11211 affects not only the NCBA which it amended. Its impact goes beyond, affecting other banking and related laws, as well as disturbing settled jurisprudence. Here comes the need of harmonizing it with such other statutes as to form a uniform system of jurisprudence, not only for academic fulfillment but also for the guidance of the public as well. Bearing this in mind, a daunting attempt has been undertaken to explain by putting into context and by harmonizing with existing laws and jurisprudence three key amendments:

- (1) the enhancement of recovery and resolution mechanisms to deal with problematic financial institutions;
- (2) the prohibition on the issuance of injunctive reliefs against the BSP actions; and
- (3) the restoration of tax exemption on all income derived from governmental functions.

The result of the attempt is a step forward in understanding how the law on central banking, while it appears to be detached from the public, is really grounded on the protection of public interest.

While the legal effects of the amendments are still uncertain as they are yet to be truly seen, one thing is certain though: with the enactment of Republic Act No. 11211, the legal framework of central banking continues to evolve.