Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOSEF-DAX AGUILAR, Petitioner, -versus- **BANGKO SENTRAL NG PILIPINAS, THE MONETARY BOARD, and PHILIPPINE DEPOSIT INSURANCE CORPORATION,** Respondents.	**G.R. No. 254333** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** JAN 14 2025

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DECISION

LEONEN, *J.*:

The Bangko Sentral ng Pilipinas (BSP), through its Monetary Board, has the authority, by virtue of its police power, to summarily, and without need for prior hearing, forbid a bank from doing business in the Philippines upon finding, supported with substantial evidence, that it has insufficient realizable assets to meet its liabilities, and/or it cannot continue in business without involving probable losses to its depositors or creditors, among others.[1] Only the stockholders of record representing the majority of the capital stock can assail such authority by filing a 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 in excess of jurisdiction within 10 days from

[1] Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 30.

receipt by the board of directors of the institution of the order directing receivership, liquidation, or conservatorship.[2]

This Court resolves the Petition for Review on *Certiorari*[3] seeking to reverse and set aside the Court of Appeals Decision[4] and Resolution[5] denying the Petition for *Mandamus* with a Prayer for Writ of Preliminary Injunction filed by Josef-Dax Aguilar (Aguilar).

Maximum Savings Bank, Inc. (MaxBank) was incorporated and granted a license to operate as a thrift bank by the BSP in February 2006.[6]

In its March 6, 2008 Resolution No. 281, the Monetary Board initiated MaxBank to Prompt Corrective Actions (PCA) status due to management and other supervisory concerns.[7] On July 10, 2014, a failure of PCA was declared because MaxBank did not meet minimum capital requirements.[8]

On October 9, 2014, MaxBank was re-initiated to PCA framework because its shareholdings were acquired by a third-party investor, Numoni Group.[9] However, Numoni Group failed to infuse additional capital to meet the capital requirement. This prompted Numoni Group to divest 52% of its ownership to Oppacher Group.[10] Oppacher Group still failed to fund the necessary capital for MaxBank, prompting it to enter into a share purchase agreement to sell or transfer 100% stockholdings of MaxBank to three newly incorporated shell companies, namely: Unicorn Wing Investments Limited, Century Merit Global Limited and DLO Holdings Philippines Inc., (collectively, third-party investors) in 2017.[11]

On November 16, 2017, the Monetary Board issued Resolution No. 1922 approving the sale/transfer of shares to the third-party investors, converting MaxBank's license from a microfinance-oriented thrift bank to a regular thrift bank.[12]

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2 Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 30.

3 *Rollo*, pp. 83–132.

4 *Id.* at 9–22. The September 3, 2020 Decision in CA-G.R. SP No. 164310 was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Walter S. Ong of the Twelfth Division, Court of Appeals, Manila.

5 *Id.* at 23–27. The November 24, 2020 Resolution in CA-G.R. SP No. 164310 was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Walter S. Ong of the Former Twelfth Division, Court of Appeals, Manila.

6 *Id.* at 87.

7 *Id.* at 156.

8 *Id.* at 156–157.

9 *Id.* at 157.

10 *Id.*

11 *Id.* at 87–88, 157.

12 *Id.* at 157.

From December 12, 2017 to January 23, 2018, BSP conducted its regular examination of MaxBank and discussed the results[13] of the examination with the members of the MaxBank's Board of Directors in an exit conference on January 31, 2018.[14] The examination noted critically deficient capital, deficient asset quality, high and increasing credit risk, deficient management, critically deficient earnings, less than satisfactory liquidity, moderate and increasing liquidity risk, less than satisfactory sensitivity to market risk, moderate and increasing market risk, high and increasing operational and compliance risk, moderate and increasing strategic risk, moderate and increasing reputation risk, and vulnerable overall assessment with Anti-Money Laundering Law, among others.[15] BSP then directed MaxBank to comply with its remaining commitments, strengthen information technology (IT) risk management, improve operational risk management.[16]

On December 10, 2018, Aguilar started working for MaxBank as its strategic business director. He became its president and chief executive officer on December 17, 2018.[17]

From February 20, 2019 to April 16, 2019, BSP conducted a regular examination of MaxBank's operations.[18] The examination covered (a) MaxBank's evaluation of compliance with the commitments in its Memorandum of Understanding and BSP directives; (b) the verification of the reliability and accuracy of reported capital, asset quality, liquidity and earnings; (c) the assessment of the risk management system effectiveness; and (d) the assessment of Board and management oversight functions.[19]

On March 21, 2019 and April 16, 2019, BSP provided an Advanced Report of Examination Findings in connection with the regular examination of MaxBank.[20] BSP also had an exit conference with bank executives to discuss its results.[21]

MaxBank submitted its Reply to the Advanced Report of Examination Findings on May 3, 2019 and its Amended And/Or Supplemental Replies/Justification in its Letters dated May 8, 2019; May 28, 2019; August 20, 2019; September 4, 2019; September 10, 2019; and October 14, 2019.[22] In its Letters dated August 1, 2019 and October 4, 2019, BSP communicated to MaxBank the results of the evaluation of its Reply.[23]

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13 *Id.* at 538–572.
14 *Id.* at 542.
15 *Id.* at 552–564.
16 *Id.* at 547–549.
17 *Id.* at 11.
18 *Id.* at 12.
19 *Id.* at 150.
20 *Id.* at 573–607.
21 *Id.* at 606–607.
22 *Id.* at 157, 608–610, 632–638, 646–650.
23 *Id.* at 158, 245–246, 729.

On October 10, 2019, the Monetary Board issued Resolution No. 1569 confirming the unsafe and unsound practices of MaxBank.[24] On October 15, 2019 and October 18, 2019, BSP informed MaxBank of the Monetary Board's decision, directing it to stop its banking practices in violation of banking rules.[25]

On November 7, 2019, the Monetary Board issued Resolution No. 1704.C[26] prohibiting MaxBank from doing business in the Philippines pursuant to Section 30(b) and (c) of Republic Act No. 7653, as amended, and designating the Philippine Deposit Insurance Corporation (PDIC) as receiver of MaxBank.

On November 8, 2019, BSP denied MaxBank's requests for: (a) an opportunity to defend its side pursuant to Section 37 of Republic Act No. 7653, as amended; (b) a copy of its report of examination; and (c) access to the documents considered in its report.[27] On the same date, BSP revoked Resolution No. 1922, which approved the transfer of shares to the third-party investors.[28]

In his Letters dated November 11 and November 12, 2019, Aguilar sought (a) reconsideration of the order of takeover and liquidation and (b) an opportunity to be heard.[29] His requests were reiterated in subsequent letters, which were noted without action by the BSP.[30]

On February 5, 2020, Aguilar filed a petition for *mandamus* with a prayer for a writ of preliminary injunction[31] before the Court of Appeals to command the BSP, the Monetary Board and the PDIC to (a) implement Section 9 of Republic Act No. 7906, otherwise known as the Thrift Bank Act of 1995, with respect to MaxBank's capital deficiency, and Section 13 of the same law for the alleged violations committed by the bank; (b) provide due process by conducting a hearing mandated by Section 37 of Republic Act No. 7653; and (c) to submit the accurate financial condition and/or result of operation of MaxBank.[32]

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24 *Id.* at 13.
25 *Id.* at 158.
26 *Id.* at 193–194.
27 *Id.* at 190–192.
28 *Id.* at 197.
29 *Id.* at 198–202, 209–212.
30 *Id.* at 213.
31 Not attached to the *rollo*.
32 *Rollo*, pp. 9–10.

Subsequently, the BSP and the Monetary Board filed its Comment[33] alleging that its decision to close MaxBank was done in strict compliance with the law, upon finding that MaxBank was unfit to continue its operations.[34]

In a September 3, 2020 Decision,[35] the Court of Appeals denied the petition for *mandamus* for being procedurally infirm under Rule 65, Section 3 of the Rules of Court.[36]

The Court of Appeals held that Aguilar was not denied due process, since he failed to prove BSP's ministerial duty to provide him a copy of the Monetary Board's Report of Examination and to afford him a hearing under Section 37 of Republic Act No. 7653.[37] The Court of Appeals found that the presence of Section 30(b) and (c) of Republic Act No. 7653 authorized the Monetary Board to order MaxBank's closure, rendering the application of Section 9 of Republic Act No. 7906 insignificant since MaxBank was already closed and under PDIC's receivership.[38]

Furthermore, the Court of Appeals held that Aguilar wrongly availed of the petition for *mandamus*, because: (a) the remedy to question the closure is through a petition for *certiorari* filed by majority of the shareholders; (b) the issues raised questioned the discretion and judgment of BSP in ordering MaxBank's closure; and (c) Aguilar failed to prove his legal standing.[39]

Finally, the Court of Appeals ruled that Aguilar failed to prove compliance with the requirements for the issuance of a writ of injunction.[40] It held that Aguilar's demands that BSP, the Monetary Board, and PDIC furnish him the copy of the reports, restrain PDIC from liquidating the assets of MaxBank or from reinstating him on the payroll of MaxBank.[41]

In a November 24, 2020 Resolution,[42] the Court of Appeals denied the Motion for Reconsideration filed by Aguilar for lack of merit.[43]

On December 3, 2020, petitioner Josef-Dax Aguilar filed the present Petition before this Court. Subsequently, on September 20, 2021, he filed a Motion to Admit *Ex Abundanti Ad Cautelam* herein Incorporated Motion for the Issuance of the Writ of Preliminary Injunction.[44] Pursuant to this Court's

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33 Not attached to the *rollo*.
34 *Rollo*, p. 13.
35 *Id.* at 9–22.
36 *Id.* at 14, 21.
37 *Id.* at 16.
38 *Id.* at 18.
39 *Id.* at 18–19.
40 *Id.* at 20.
41 *Id.*
42 *Id.* at 23–27.
43 *Id.* at 26.
44 *Id.* at 309–328.

June 14, 2021 Resolution, respondents BSP and the Monetary Board, through the Office of the Solicitor General, filed their September 3, 2021 Comment.[45] Respondent PDIC likewise filed its Comment on September 15, 2021.[46] In compliance with the October 23, 2023 Resolution of the Court, petitioner filed his Consolidated Reply on December 19, 2023.[47]

In the present Petition, petitioner claims that the Court of Appeals erred in dismissing the case based on procedural infirmities.[48]

Petitioner argues that Section 30 of Republic Act No. 7653 is unconstitutional. He claims that limiting the manner of how to complain (by *certiorari* only), the person who can complain (only stockholders on record representing the majority of the capital stock) and the period when to complain (10 days) modify Rules 43 and 65 of the Rules of Court. These encroach on the rule-making power of the Supreme Court.[49] Petitioner argues that the 10 days to question a bank closure is too short, particularly when the bank's officers no longer have access to the bank records and information upon the declaration of bank closure.[50]

Petitioner further claims to have no recourse to defend his livelihood, honor, and reputation as a director, nominal stockholder, and a former president and chief executive officer of MaxBank.[51] He argues that the exit conference held on April 16, 2019 is not enough because all MaxBank's executives present in the exit conference, except him, resigned shortly afterwards.[52] Petitioner points out that the BSP had two months to gather documents and conduct interviews during its regular examination and seven months to write its corresponding Report, but MaxBank was given only three to four hours of due process in the exit conference.[53]

Thus, petitioner argues that Section 37 of Republic Act No. 7653, pertaining to the right to be heard, should also apply to any order prohibiting a bank to do a particular act or engage in lawful business allied to banking, and not just to a "cease and desist order" as limited by the Court of Appeals.[54]

Petitioner also claims a right to have a copy of the Report of Examination in bank closure, contrary to this Court's ruling in *BSP v. Valenzuela*.[55] Petitioner argues that it is unfair to be deprived of a copy of the

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45 *Id.* at 344–444.
46 *Id.* at 292–308.
47 *Id.* at 1120–1159.
48 *Id.* at 102.
49 *Id.* at 104–105.
50 *Id.* at 103.
51 *Id.* at 105–106.
52 *Id.* at 111.
53 *Id.* at 112.
54 *Id.* at 114–115.
55 *Id.* at 106. *See also BSP v. Hon. Valenzuela*, 617 Phil. 916 (2009) [Per J. Velasco, Jr., Third Division].

Report of Examination when officers of the bank that closed are automatically disqualified to be hired by other banks.[56]

Petitioner now claims that the closure of MaxBank is illegal. He argues that the Report of Examination of MaxBank contained faulty assumptions and intentional misrepresentations, because (a) it did not include the deposits for stock subscription amounting to PHP 236,290,000.00 as part of capital infusion by the third-party investors as of December 31, 2018 in its Report of Examination;[57] (b) it stated "with pictures taken in the BGC BLU premises and admission of prior knowledge in an electronic mail thread of Atty. Josef-Dax C. Aguilar," making it appear that the email preceded the photos;[58] and (c) it stated that MaxBank had "inadequate FX Risk Management System" and "no hedging strategy to protect the bank from adverse fluctuation resulting FX Losses of [PHP] 0.1 [m]illion and 0.9 [m]illion for the years ended 31 December 2017 and 2018, respectively" when the foreign exchange profit was PHP 53,478,520.23.[59]

Petitioner claims that the closure of MaxBank was based on the December 31, 2018 figures, despite the availability of more recent figures submitted to the BSP, specifically the figures available in July, August, and September 2019.[60] Petitioner argues that it already hired more competent and professionally qualified people to manage MaxBank by that time, and that the bank had posed a net income of PHP 14,469,706.94 for the month of July 2019, and PHP 30,444,565.97 for the month of August 2019.[61]

Finally, petitioner insists that the latest available financial statement of MaxBank reveals its solvency with PHP 227,937,000.00 worth of excess assets over liabilities and PHP 1,359,421.00 worth of financial assets.[62] With this, petitioner concludes that BSP engaged in illogical accounting to justify closing MaxBank.[63]

On the other hand, respondents claim that the petition must be dismissed both on procedural and substantive grounds. According to respondents, the Court of Appeals did not simply dismiss the petition for *mandamus* for being an improper remedy, but it judiciously resolved the case on the merits.[64]

Respondents argue that *mandamus* is not the proper remedy to assail the closure of MaxBank, because *mandamus* cannot compel an exercise of

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56 *Id.* at 113.
57 *Id.* at 108.
58 *Id.*
59 *Id.* at 108–109.
60 *Id.* at 116–117.
61 *Id.* at 117.
62 *Id.* at 125.
63 *Id.* at 121.
64 *Id.* at 367.

discretionary act and cannot supplant the lost remedy allowed under the law.[65] They insist that petitioner should have filed a petition for *certiorari*.[66]

Respondents further argue that even if the present Petition be considered a *certiorari* petition, it would not prosper for being contrary to Section 30 of Republic Act No. 7653, because it was not filed by the proper party or the stockholders of record representing the majority of the capital stock, and it was not filed on time.[67] Petitioner, who is a nominal shareholder, filed the petition for *mandamus* on February 5, 2020, or almost three months from the time he received the certified true copy of Resolution No. 1704.C on November 8, 2019, which was clearly beyond the allowed 10-day period.[68] Respondents note that the several requests for reconsideration filed by petitioner before respondent Monetary Board did not toll the period to assail the subject resolution.[69]

Respondents further claim that petitioner failed to show his legal standing, since he filed the Petition by himself, in his personal capacity as a nominal shareholder.[70] According to respondents, petitioner failed to show being a real party-in-interest, since engaging in the banking business is merely a privilege, and his personal rights were not violated.[71]

Respondents allege that Section 30 of Republic Act No. 7653, as amended, conforms to Article VIII, Section 5(5) of the Constitution, as it only laid the substantive requirements or conditions on the mode of appeal (*certiorari*), legal standing, and reglementary period of 10 days imposed by legislature, which do not encroach on the rule-making powers of the Court.[72] Furthermore, they argue that the provisions laid down under Section 30 of Republic Act No. 7653 did not deprive petitioner of any opportunity to be heard nor prevent him from having his day in court.[73] They claim that petitioner cannot shift the blame to the provisions of the law just because he availed of the wrong remedy and did not follow the statutory requirements for a proper action.[74] Respondents claim that declaring the law unconstitutional will constrain the law and prevent it from fully regulating banks found unworthy to continue operations.[75]

Respondents further argue that the administrative proceeding under Section 37 cannot be conducted prior to the issuance of a closure order under Section 30 of Republic Act No. 7653 because of its distinct grounds, subject,

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65 *Id.* at 370–371, 373.
66 *Id.* at 372.
67 *Id.* at 367–369.
68 *Id.* at 373.
69 *Id.*
70 *Id.* at 374.
71 *Id.* at 375.
72 *Id.* at 378.
73 *Id.* at 379.
74 *Id.* at 383.
75 *Id.* at 383.

and urgency involved.[76] Respondents argue that they duly observed due process of law in prohibiting MaxBank from conducting its business and afforded it with a chance to restore its financial condition, despite petitioner's non-entitlement to a copy of the Report of Examination.[77]

Respondents claim that the Petition raises arguments precipitately premised on facts that are not established on record and cannot be a subject of a petition under Rule 45 of the Rules of Court.[78] They argue that the order of closure was called for by the totality of the circumstances and based on substantial evidence gathered from the continuous regular examination of MaxBank, which was deemed to have insufficient realizable assets to meet its liabilities. It cannot continue in business without involving probable losses to its depositors and creditors.[79] Respondents allege finding MaxBank to have committed unsafe or unsound banking practices and violation of banking laws,[80] particularly, unauthorized operation of Branch Lite Unit in BGC, Taguig City,[81] hazardous lending and lax collection policies and practices,[82] and opening accounts of foreign nationals who appear to be related to MBI Group.[83]

Respondents further revoked approval of capital infusion by third-party investors due to material misrepresentations and violation of banking laws, rules and regulations, specifically for (1) violation of limits for individual and aggregate foreign stockholdings; (2) material difference in business model presented and implemented; and (3) failure to adhere to their commitment to comply with the minimum capital requirements, contrary to their Deed of Undertaking.[84]

Respondents BSP and the Monetary Board maintain that they validly issued the resolution prohibiting MaxBank from doing business in the Philippines based on respondent BSP's authority to supervise banks and findings of insufficient realizable assets to meet its liabilities and probability of losses to Maxbank's depositors and creditors.[85] They did not intend to invade or violate the right, if any, of the petitioner but they were merely fulfilling its mandate under the law to protect the rights of depositors, creditors, the public at large, and to maintain the stability of the banking system and the economy.[86]

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76 *Id.* at 394.
77 *Id.* at 428.
78 *Id.* at 384–385.
79 *Id.* at 402.
80 *Id.* at 415.
81 *Id.* at 417.
82 *Id.* at 421.
83 *Id.* at 424.
84 *Id.* at 394, 398, 400–401.
85 *Id.* at 385.
86 *Id.* at 405, 428.

Finally, respondents BSP and the Monetary Board claim that petitioner failed to establish his clear and unmistakable right to justify the issuance of a writ of preliminary injunction as his alleged loss of employment is insufficient basis for the application for injunctive relief.[87] Petitioner allegedly did not present any justifiable basis for the issuance of preliminary mandatory injunction as the closure and liquidation of MaxBank did not cause him substantial and/or irreparable damage.[88]

On the other hand, respondent PDIC claims that the Court of Appeals did not err in dismissing the petition for *mandamus* filed by petitioner for being a wrong remedy and for failure to comply with Section 30 of Republic Act No. 7653.[89] Respondent PDIC argues that the Petition failed to state a cause of action because petitioner is not a real party-in-interest.[90] Likewise, respondent PDIC argues that *mandamus* will not lie against it because it is performing a ministerial duty under the PDIC charter as receiver of MaxBank.[91] It further claims that petitioner raised the constitutionality of Section 30 of Republic Act No. 7653, Section 30 as a mere afterthought, after his remedy was denied by the Court of Appeals.[92] Finally, it claims that petitioner failed to prove that an injunctive writ will prevent serious and irreparable damage on MaxBank.[93]

In his Reply, petitioner reiterates his arguments in his Petition and asserts that there was an excess of assets over liabilities in the amount of PHP 58,163,284.23 when PDIC took over MaxBank's affairs, per Petition for Liquidation of Assets filed before the trial court.[94] Petitioner thus insists that there were no probable losses to the bank depositors and creditors.[95] Petitioner likewise reiterates his legal standing to question the unjust closure of MaxBank because he sustained direct injury from loss of his livelihood, career, honor and reputation.[96] Petitioner admits uncertainty of whether *mandamus* is the proper remedy, but asserts that the Court may relax procedural rules in its administration of justice.[97]

The issues for this Court's resolution are as follows:

First, whether the Court of Appeals correctly dismissed the petition for *mandamus* filed by petitioner for being the wrong remedy;

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87 *Id.* at 434, 436, 438.
88 *Id.* at 439–440.
89 *Id.* at 294–295.
90 *Id.* at 297.
91 *Id.* at 298–299.
92 *Id.* at 300.
93 *Id.* at 301.
94 *Id.* at 1123–1124.
95 *Id.* at 1125.
96 *Id.* at 1132.
97 *Id.* at 1133.

Second, whether petitioner has standing to question MaxBank's closure under Section 30 of Republic Act No. 7653, as amended by Republic Act No. 11211, and if none, whether Republic Act No. 7653, Section 30, as amended by Republic Act No. 11211, is constitutional;

Third, whether petitioner is denied due process, particularly, whether Section 37 of Republic Act No. 7653 is applicable, and whether petitioner is entitled to have a copy of the Report of Examination; and

Finally, whether MaxBank's closure has factual and legal basis.

We deny the Petition.

By Constitutional mandate and under the New Central Bank Act, respondent BSP acts as an independent central monetary authority, directing monetary, banking, and credit policies, and exercises supervision over the operations of banks.[98] The BSP acts, through respondent Monetary Board,[99] an exercise of powers and functions, which may be characterized as administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of these five, as an administrative agency.[100] One of its powers includes forbidding a bank from doing business in the Philippines when public interest so requires:[101]

> 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*:
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> (a) has notified the *Bangko Sentral* 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;
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> *(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or*
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> *(c) cannot continue in business without involving probable losses to its depositors or creditors; or*
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> (d) 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

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98 CONST., art. XII, sec. 20. *See also* Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 2.

99 Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 6.

100 *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*, 832 Phil. 27, 57–58 (2018) [Per J. Leonen, Third Division].

101 Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 30.

> cases, *the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation (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.
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> *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.
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> 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 *Bangko Sentral* as a receiver. (Emphasis supplied)

This "close now and hear later" scheme aims to protect depositors, creditors, stockholders, and the public from unwarranted dissipation of the bank's assets.[102] Thus, a prior hearing in order to close a bank is unnecessary as it is justified by the State's exercise of police power:

> It has long been established and recognized in this jurisdiction that the closure and liquidation of a bank may be considered as an exercise of police power. Such exercise may, however, be subject to judicial inquiry and could be set aside if found to be capricious, discriminatory, whimsical, arbitrary, unjust or a denial of the due process and equal protection clauses of the Constitution.
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> The evident implication of the law, therefore, is that the appointment of a receiver may be made by the Monetary Board without notice and hearing but its action is subject to judicial inquiry to insure the protection of the banking institution. Stated otherwise, due process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be *subsequent* to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic

[102] *The Central Bank of the Philippines v. Court of Appeals*, 292-A Phil. 669, 679 (1993) [Per. J. Bellosillo, *En Banc*].

> and hysteria. In the process, fortunes may be wiped out, and disillusionment will run the gamut of the entire banking community.[103]

Subsequent judicial review of the Monetary Board's closure order is necessitated by the fact that "every minute of delay in securing assets from dissipation inevitably increases the danger to the creditors."[104] Further, being affected with public interest, banks are properly subject to reasonable regulations by the State:

> It must be stressed in this connection that the banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state. Banks are affected with public interest because they receive funds from the general public in the form of deposits. Due to the nature of their transactions and functions, a fiduciary relationship is created between the banking institutions and their depositors. Therefore, banks are under the obligation to treat with meticulous care and utmost fidelity the accounts of those who have reposed their trust and confidence in them.
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> It is then Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the Central Bank which, pursuant to its charter, is authorized to administer the monetary, banking and credit system of the Philippines. Under both the 1973 and 1987 Constitutions, the Central Bank is tasked with providing policy direction in the areas of money banking and credit; corollarily, it shall have supervision over the operations of banks. Under its charter, the CB is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well. This power has been expressly recognized by this Court. In *Philippine Veterans Bank-Employees Union-NUBE vs. Philippine Veterans Bank,* this Court held that:
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> > ". . . Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government. The government cannot simply cross its arms while the assets of a bank are being depleted through mismanagement or irregularities. It is the duty of the Central Bank in such an event to step in and salvage the remaining resources of the bank so that they may not continue to be dissipated or plundered by those entrusted with their management."[105]

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[103] *Rural Bank of Buhi, Inc., v. Court of Appeals,* 245 Phil. 263, 277–278 (1988) [Per J. Paras, Second Division].

[104] *Rural Bank of Lucena v. Arca,*122 Phil. 469, 475 (1965) [Per J. J.B.L. Reyes, *En Banc*].

[105] *Central Bank of the Phils. v. Court of Appeals,* 284-A Phil. 143, 184–185 (1992) [Per J. Davide, Jr., *En Banc*].

Prior to Republic Act No. 7653, Republic Act No. 265, or the Central Bank Act likewise provided a similar proceeding in cases of insolvency of banks. Particularly, the fifth paragraph[106] of Section 29 of Republic Act No. 265 specifies that the action of the Monetary Board in forbidding a bank to do business in the Philippines and designating a receiver shall be final and executory, and can be set aside only: (a) by filing an appropriate pleading; (b) by the stockholders of record representing the majority of the capital stock of the institution before the proper court; (c) within a period of 10 days from the date the receiver takes charge of the assets and liabilities of the bank; and (d) with convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.

Republic Act No. 265, including Section 29, has been expressly repealed by Republic Act No. 7653, which took effect in 1993.[107] Under the now applicable Section 30 of Republic Act No. 7653, as amended by Republic Act No. 11211, or the New Central Bank Act, the grounds and conditions on which the Monetary Board shall declare a bank closure are specifically enumerated, and the procedure in the receivership and liquidation of banks or quasi-banks is clearly specified.

Section 30 of Republic Act No. 7653 expressly provides that the actions of the Monetary Board pursuant to the said provision shall be final and executory, and may not be restrained or set aside by the courts, except through:

1. a 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;

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[106] Republic Act No. 265 (1948), sec. 29, par. 5 provides:
The provision of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section, Section 28-A, and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by a court only if there is convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith; Provided, That the same is raised in an appropriate pleading filed by the stockholders of record representing the majority of the capital stock of the institution before the proper court within a period of ten (10) days from the date the receiver takes charge of the assets and liabilities of the bank or non-bank financial intermediary performing quasi-banking functions or, in case of conservatorship or liquidation, within ten (10) days from receipt of notice by the said majority stockholders of said bank or non-bank financial intermediary of the order of its placement under conservatorship or liquidation. No restraining order or injunction shall be issued by any court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act in the absence of any convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner of plaintiff files a bond, executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier's check., in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of the Court in so far 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.

[107] *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62, 71 (2007) [Per J. Corona, First Division].

2. filed by the stockholders of record representing the majority of the capital stock; and

3. within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

Here, the Monetary Board issued Resolution No. 1704.C in the exercise of its power under Section 30 of Republic Act No. 7653, as amended by Republic Act No. 11211. The Petition must therefore be denied outright for failing to comply with the explicit procedural requisites under Section 30 of Republic Act No. 7653.

First, petitioner failed to file a petition for *certiorari* on the ground that the action taken by the Monetary Board was in excess of jurisdiction or with such grave abuse of discretion as to amount to the same. The Court of Appeals aptly ruled that the petition for mandamus filed by petitioner is unavailing.

The rules on *mandamus* are enshrined in Rule 65, Section 3 of the Rules of Civil Procedure, thus:

> SECTION 3. *Petition for Mandamus. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station,* or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
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> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied)

In *Lihaylihay v. Tan*,[108] this Court specified the conditions when a writ of *mandamus* may issue:

> A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

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[108] 836 Phil. 400 (2018) [Per J. Leonen, Third Division].

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals,* this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral,* this Court underscored that a writ of mandamus "never issues in doubtful cases."

Respondents must also be shown to have actually neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully neglect" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Samson v. Barrios:*

> Discretion, when applied to public functionaries, means a power or rights conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . , when the act complained of is either judicial or quasi-judicial. . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion. (Citations omitted)

Mandamus, too, will not issue unless it is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law."

> This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus.[109]

On the first instance, the rules on *mandamus* clearly lie only when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act.[110] It should only issue to direct the exercise of a ministerial duty, and not the exercise of discretionary duty of the legislative and executive branches or their members:

> Since the Court has "no supervisory power over the proceedings and actions of the administrative departments of the government," it "should not generally interfere with purely administrative and discretionary functions." The power of the Court in mandamus petitions does not extend "*to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.*"
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> . . . .
>
> It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.
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> In *De Castro v. Salas*, we held that no rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court when honestly exercised and when such power and authority is not abused.
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> In exceptional cases, the Court has granted a prayer for mandamus to compel action in matters involving judgment and discretion, only "to act, but not to act one way or the other," and *only in cases where there has been a clear showing of grave abuse of discretion, manifest injustice, or palpable excess of authority.*[111] (Emphasis supplied)

In *Rural Bank of Buhi v. Court of Appeals*,[112] this Court held that it was the then Central Bank's (now, BSP) exercise of discretion in determining whether a distressed bank shall be supported or liquidated. The Monetary Board is deemed primarily entrusted by law with its own appreciation and judgment of the presence of the conditions by which a bank closure is necessary, such as whether a bank's continuance in business would involve probable loss to its clients or creditors, or it cannot resume business safely.[113]

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109 *Id.* at 412–414.

110 *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 472 (2017) [Per J. Carpio, *En Banc*].

111 *Id.* at 532–534.

112 245 Phil. 251 (1988) [Per J. Paras, Second Division].

113 *Rural Bank of Lucena, Inc., v. Arca*, 122 Phil. 469, 475 (1965) [Per J. J.B.L. Reyes, *En Banc*]. (Citation omitted)

Furthermore, as a quasi-judicial agency, the Monetary Board investigates facts, or ascertains the existence of facts, holds hearings, and draws conclusions from them, as a basis for their official action and thus, exercises discretion of a judicial nature, thus:

> A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.
>
> Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking and credit. It has power 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 others, needed in its examination, to impose fines and other sanctions and to issue cease and desist order. Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.
>
> Having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions; then as such, it is one of those quasi-judicial agencies, though not specifically mentioned in Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure, are deemed included therein.[114]

Thus, to question the bank closure, which was an exercise of discretionary duty by the Monetary Board, the proper remedy would have been to file a petition for *certiorari* on the ground that the closure was done in excess of jurisdiction or with such grave abuse of discretion.

In any event, petitioner failed to prove the ministerial duty on the part of BSP and Monetary Board to provide petitioner a copy of the Report of Examination, to order a hearing under Section 37 of Republic Act No. 7653,

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[114] *United Coconut Planters Bank v. E. Ganzon, Inc.*, 609 Phil. 104, 122–124 (2009) [Per J. Chico-Nazario, Third Division].

or to apply Section 9 of Republic Act No. 7906[115] to solve the bank's capital deficiency.

As this Court held in *Bangko Sentral ng Pilipinas v. Hon. Valenzuela*,[116] there is no provision of law pointing to BSP's duty to provide a copy of the Report of Examination to the bank being examined. Banks, including their officers, are already well-aware of what is required from them by the BSP, and cannot claim violation of their right to due process simply because they were not furnished with copies of the Report of Examination. In the same manner, petitioner cannot claim denial to due process for not having a hearing under Section 37[117] of Republic Act No. 7653 because this provision

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[115] Republic Act No. 7906 (1995), sec. 9, reads, in part:
...The Monetary Board shall prescribe the manner of determining the total assets of banking institutions for purposes of this Section.
Whenever the capital accounts of a bank are deficient with respect to the requirements of the preceding paragraph, the Monetary Board, after considering the report of the appropriate supervising department on the state of solvency of the institution, shall limit or prohibit the distribution of net profits and shall require that part or all of net profits be used to increase the capital accounts of the institution until the minimum requirement has been met. The Monetary Board may, after considering the aforesaid report of the appropriate supervising department and if the amount of the deficiency justifies it, restrict or prohibit the making of new investments of any sort by the bank, with the exception of purchases of evidences of indebtedness included under subsection (c) of this Section, until the minimum required capital ratio has been restored.
Where in the process of a bank merger or consolidation, the merged or constituent bank may not be able to comply fully with the net worth to risk asset ratio herein prescribed, the Monetary Board may, at its discretion, temporarily relieve the bank from full compliance with this requirement under such conditions it may prescribed.

[116] 617 Phil. 916 (2009) [Per J. Velasco, Jr., Third Division].

[117] Republic Act No. 7653 (1993), as amended by Republic Act No. 11211 (2019), sec. 37 provides:
SECTION 37. *Administrative Sanctions on Supervised Entities.* — The imposition of administrative sanctions shall be fair, consistent and reasonable. Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank, quasi-bank, including their subsidiaries and affiliates engaged in allied activities, or other entity which under this Act or special laws are subject to the *Bangko Sentral* supervision, and/or their directors, officers or employees, for any willful violation of its charter or bylaws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:
(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed One million pesos (P1,000,000) for each transactional violation or One hundred thousand pesos (P100,000) per calendar day for violations of a continuing nature, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the institution: *Provided*, That in case profit is gained or loss is avoided as a result of the violation, a fine no more than three (3) times the profit gained or loss avoided may also be imposed;
(b) suspension of rediscounting privileges or access to *Bangko Sentral* credit facilities;
(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;
(d) suspension of interbank clearing privileges; and/or
(e) suspension or revocation of quasi-banking or other special licenses.
"Resignation or termination from office shall not exempt such director, officer or employee from administrative or criminal sanctions.
"The Monetary Board may, whenever warranted by circumstances, preventively suspend any director, officer or employee of the institution pending an investigation: *Provided*, That should the case be not finally decided by the *Bangko Sentral* within a period of one hundred twenty (120) days after the date of suspension, said director, officer or employee shall be reinstated in his position: *Provided, further*, That

contemplates the exercise of the Monetary Board's discretion in determining whether administrative sanctions should be imposed on banks, its director, officer or employee, which is entirely different from Section 30, the applicable provision in this case. Also, to apply Section 9 of Republic Act No. 7906 to solve the bank's capital deficiency is likewise discretionary on the part of respondents, and asking for its application is an implied admission of petitioner that MaxBank's capital accounts are deficient.

Even a *mandamus* based on the second ground would not prosper. A petition for *mandamus* seeks to protect the exclusion of one from the use and enjoyment of a right or office. However, petitioner's employment here is not a right or office contemplated for the issuance of *mandamus*. Petitioner has no enforceable right over his employment as a former president and chief executive officer.

Accordingly, the Court of Appeals did not err in denying the petition for *mandamus* for being the wrong remedy. Petitioner himself admits that he availed of *mandamus*, despite being uncertain himself if the remedy was correct.[118] For deliberately filing the wrong remedy, his Petition cannot be considered.

Second, even if we treat the Petition as a *certiorari* petition, it will still not be meritorious for not being filed by the proper party within ten days from receipt by the board of directors of the order directing receivership, liquidation, or conservatorship.

The law is explicit that only the stockholders of record representing majority of the capital stock may bring the action to set aside a resolution placing a bank under conservatorship. This Court has explained that the

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when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.
"The above administrative sanctions need not be applied in the order of their severity.
"Whether or not there is an administrative proceeding, if the institution and/or the directors, officers or employees concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors, officers or employees concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.
"The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.
"The Governor is hereby authorized, at his discretion, to impose upon banks and quasi-banks, including their subsidiaries and affiliates engaged in allied activities, and other entities which under this Act or special laws are subject to *Bangko Sentral* supervision for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of One hundred thousand pesos (P100,000) for each transactional violation or Thirty thousand pesos (P30,000) per calendar day for violations of a continuing nature, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal."

[118] *Rollo*, p. 1133.

purpose is to safeguard the majority stockholder's rights and interests, and to prevent the board of directors or officers to frustrate or defeat the resolution, hence:

> The purpose of the law in requiring that only the stockholders of record representing the majority of the capital stock may bring the action to set aside a resolution to place a bank under conservatorship is to ensure that it be not frustrated or defeated by the incumbent Board of Directors or officers who may immediately resort to court action to prevent its implementation or enforcement. It is presumed that such a resolution is directed principally against acts of said Directors and officers which place the bank in a state of continuing inability to maintain a condition of liquidity adequate to protect the interest of depositors and creditors. Indirectly, it is likewise intended to protect and safeguard the rights and interests of the stockholders. Common sense and public policy dictate then that the authority to decide on whether to contest the resolution should be lodged with the stockholders owning a majority of the shares for they are expected to be more objective in determining whether the resolution is plainly arbitrary and issued in bad faith.[119]

Here, petitioner admits having filed the present Petition before us based on his right as a nominal shareholder, a former president and chief executive officer, who is allegedly deprived of his livelihood and denied due process. Clearly, petitioner is not the "stockholders of record representing the majority of the capital stock" as required by law. In addition, petitioner only filed his Petition assailing the Resolution No. 1704.C dated November 7, 2019 issued by the Monetary Board on February 5, 2020, patently well beyond the 10-day period from receipt of the Resolution.

In *Central Bank of the Phils. v. Court of Appeals*,[120] the Court, in applying the fifth paragraph of Section 29 of the Central Bank Act, held that the order placing Producers Bank of the Philippines under conservatorship had long become final and can no longer be questioned for being filed beyond the prescribed 10-day period, thus:

> In the instant case, PBP was placed under conservatorship on 20 January 1984. The original complaint in Civil Case No. 17692 was filed only on 27 August 1987, or *three (3) years, seven (7) months and seven (7) days* later, long after the expiration of the 10-day period referred to above. It is also beyond question that the complaint and the amended complaint were not initiated by the stockholders of record representing the majority of the capital stock. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Applying the original provision of the aforesaid Section 29 of the Central Bank Act, this Court, in *Rural Bank of Lucena, Inc. vs. Arca, et al.,* ruled that:

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[119] *Central Bank of the Phils. v. Court of Appeals,* 284-A Phil. 143, 178 (1992) [Per J. Davide, Jr., *En Banc*].
[120] 284-A Phil. 143 (1992) [Per J. Davide, Jr., *En Banc*].

> "Nor can the proceedings before Judge Arca be deemed a judicial review of the 1962 resolution No. 122 of the Monetary Board, if only because by law (Section 29, R.A. 265) such review must be asked within 10 days from notice of the resolution of the Board. Between the adoption of Resolution No. 122 and the challenged order of Judge Arca, more than one year had elapsed. Hence, the validity of the Monetary Board's resolution can no longer be litigated before Judge Arca, whose role under the fourth paragraph of section 29 is confined to assisting and supervising the liquidation of the Lucena bank."[121]

The Court further held that the claim for damages due to the Monetary Board's act of placing the bank under conservatorship should not be separable from an action to set aside the conservatorship; otherwise, the provision of the law prescribing the 10-day period could be rendered meaningless and illusory by the bank's filing beyond the prescribed 10-day period, of an action ostensibly claiming damages but in reality questioning the conservatorship.

In *Ekistiks Philippines, Inc. v. Bangko Sentral ng Pilipinas*,[122] the Court held that petitioner Ekistiks cannot get around the rules and use the petition-in-intervention to restrain a final and executory order of the Monetary Bank liquidating Banco Filipino, thus:

> Applying the foregoing, in order to validly question the action of the Monetary Board regarding matters of liquidation, the majority stockholders-of-record of the ailing bank must file the petition for *certiorari* before the CA. Truly, herein petitioner Ekistics cannot get around the rules and underhandedly use the petition-in-intervention to restrain a final and executory order of the Monetary Bank directing the liquidation of Banco Filipino. Assuming Ekistics filed a petition for *certiorari*, it still has no legal standing to file the same considering it is a stockholder-of-record merely holding a minority share. As the rules clearly provide, only majority stockholders-of-record are allowed to file the petition for *certiorari*.[123]

Similarly, here, petitioner cannot use the petition for *mandamus* to restrain a final and executory order of the Monetary Bank from liquidating MaxBank. Consequently, for failure to file the appropriate pleading to question the order of the Monetary Board in closing the bank, the petition must be outrightly dismissed.

Still, petitioner insists that Section 30 of Republic Act No. 7653 is unconstitutional, because the limit on the manner of complaint, the person who can complain, and the period to complain modify Rules 43 and 65 of the

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121 *Id.* at 176–177.
122 903 Phil. 314 (2021) [Per J. Delos Santos, Third Division].
123 *Id.* at 329.

Rules of Court, and encroach on the rule-making power of the Supreme Court.[124]

However, petitioner himself admits that he seeks the declaration of unconstitutionality of the said legal provision only if the Court declares that he has no legal standing.[125] Such conditional and collateral attack on the constitutionality of the law has never been permitted by the Court. In *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*,[126] this Court rejected a similar collateral attack on the same provision:

> Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[127]

In his Petition, petitioner recognizes that the unconstitutionality of a law may not be collaterally attacked, but nonetheless insists that his Petition be heard:

> ...Petitioner is the first to admit that the unconstitutionality of a law may not be collaterally attacked. However, at the outset, all he wanted is to have his day in Court and defend his action pursuant to Section 37 of RA 7653, as amended. Nothing more. What is preventing him from having his day in Court is the manifest unconstitutionality of Section 30 of RA 7653, as amended. As discussed, Section 30 is the main hindrance why he cannot defend himself before the respondent MB or apparently as claimed by the CA, even in a court of law because only the majority of stockholders on record thru a petition for certiorari within 10 days from receipt thereof can question the deprivation of petitioner's livelihood and honor. It is only upon receipt of the CA decision that petitioner came to know the official stand of the judiciary that as a director, a nominal stockholder and a former President/CEA, he has no recourse to defend his livelihood and honor/reputation. The legislature denied him of his constitutional right to seek redress.[128]

Hence, petitioner's statement reveals that his attack on the constitutionality of the law is a mere afterthought upon his failure to file the appropriate remedy.

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124 *Rollo*, pp. 104–105.
125 *Id.* at 126–127.
126 716 Phil. 132 (2013) [Per J. Mendoza, Third Division].
127 *Id.* at 153.
128 *Rollo*, pp. 50–51.

At any rate, Congress, given its plenary legislative power, has the jurisdiction to define the limit of the agency's jurisdiction in the same manner it defines the jurisdiction of the courts:

> In the exercise of its plenary legislative power, Congress may create administrative agencies endowed with quasi-legislative and quasi-judicial powers. Necessarily, Congress likewise defines the limits of an agency's jurisdiction in the same manner as it defines the jurisdiction of courts. As a result, it may happen that either a court or an administrative agency has exclusive jurisdiction over a specific matter or both have concurrent jurisdiction on the same. It may happen, too, that courts and agencies may willingly relinquish adjudicatory power that is rightfully theirs in favor of the other.[129]

Furthermore, "courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government."[130] A law is presumed valid and constitutional absent proof of clear and unequivocal breach of the Constitution:

> [It is a] time-honored principle, deeply ingrained in our jurisprudence, that a statute is presumed to be valid. Every presumption must be indulged in favor of its constitutionality. This is not to say that We approach Our task with diffidence or timidity. Where it is clear that the legislature or the executive for that matter, has over-stepped the limits of its authority under the constitution, We should not hesitate to wield the axe and let it fall heavily, as fall it must, on the offending statute.
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> In *Victoriano v. Elizalde Rope Workers' Union, et al*, the Court thru Mr. Justice Zaldivar underscored the —
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> > ". . . thoroughly established principle which must be followed in all cases where questions of constitutionality as obtain in the instant cases are involved. All presumptions are indulged in favor of constitutionality; one who attacks a statute alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld and the challenger must negate all possible basis; that the courts are not concerned with the wisdom, justice, policy or expediency of a statute and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted."
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129 *Bank of Commerce v. Planter's Development Bank*, 695 Phil. 627, 667 (2012) [Per J. Brion, Second Division].

130 *Angara v. Electoral Commission*, 63 Phil. 139, 158–159 (1936) [Per J. Laurel, *En Banc*].

> Every law has in its favor the presumption of constitutionality. Therefore, for PD 1869 to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution, not merely a doubtful and equivocal one. In other words, the grounds for nullity must be clear and beyond reasonable doubt. (Peralta v. Comelec, supra) Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis for such a declaration. Otherwise, their petition must fail. Based on the grounds raised by petitioners to challenge the constitutionality of P.D. 1869, the Court finds that petitioners have failed to overcome the presumption. The dismissal of this petition is therefore, inevitable. But as to whether P.D. 1869 remains a wise legislation considering the issues of "morality, monopoly, trend to free enterprise, privatization as well as the state principles on social justice, role of youth and educational values" being raised, is up for Congress to determine.[131]

Likewise, here, petitioner failed to overcome the presumption of constitutionality of Section 30 of Republic Act No. 7653.

Nevertheless, petitioner still assails the Monetary Board's Resolution No. 1704.C[132] declaring MaxBank's closure and prohibiting it from doing business in the Philippines.

This Court finds that petitioner failed to show grave abuse of discretion on the part of the Monetary Board for issuing the assailed Resolution No. 1704.C[133] forbidding MaxBank from doing business in the Philippines.

The Monetary Board issued Resolution No. 1704.C based under Section 30(b) and (c) of Republic Act No. 7653, specifically upon finding that MaxBank: "(a) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or (b) cannot continue in business without involving probable losses to its depositors or creditors:"

> On the basis of the findings noted in the regular examination as of 31 December 2018 (started on 20 February 2019 and completed on 16 April 2019) and the report of the Financial Supervision Department (FSD) VIII and Financial System Integrity Department (FSID), in a joint memorandum dated 6 November 2019, which findings showed that Maximum Savings Bank, Inc. (MaxBank) (a) has insufficient realizable assets, as determined by the Bangko Sentral ng Pilipinas (BSP), to meet its liabilities; and (b) cannot continue in business without involving probable losses to its depositors and creditors, as evidenced by the Bank's (i) negative capital adequacy ratio (CAR), negative adjusted capital, and chronic capital deficiencies; (ii) chronic net losses and poor operating performance; (iii) Prompt Corrective Action status and non-compliance with the Monetary Board directives therein; and (iv) Board of Directors (BOD) and Management's failure to effectively manage and oversee the affairs and

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131 *Basco v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323, 334–344 (1991) [Per J. Paras, *En Banc*].

132 *Rollo*, pp. 193–194.

133 *Id.*

> operations of the Bank resulting in the violation of the BSP regulation on servicing deposits outside bank premises and commission of unsafe or unsound banking leading to net losses and dissipation of assets, and that based on the existing circumstances and conditions evaluated by FSD VIII and FSID, the losses will continue and it is unlikely that losses will be reversed, which are grounds for prohibiting the Bank from doing business in the Philippines under Section 30 (b) and (c) of Republic Act (R.A.) No. 7653 (The New Central Bank Act), as amended; and considering that the Bank's BOD/Management/Stockholders failed to (i) prove that the P300 million funds infused came from the third party investors approved by BSP namely, Unicorn Wing Investments Limited, Century Merit Global Limited, and DLO Holdings (Philippines), Inc. on a 40%-20%-40% basis; (ii) abide by their undertaking to cause the infusion of capital to meet the minimum requirements; (iii) restore the Bank's financial health and viability and address its financial and operational problems; (iv) comply with the commitments in the Memorandum of Understanding; (v) reverse the Bank's chronic losses, negative adjusted capital, negative CAR, and negative net realizable value of assets; and (vi) address the violation of the BSP regulation on servicing deposit outside banking premises and commission of unsafe or unsound banking leading to dissipation of asserts, and considering further that the Bank had been accorded due process, the Board approved the joint recommendation of FSD VIII and FSID, endorsing as follows:[134]

The action of the Monetary Board in closing a bank is final and executory and may only be set aside if found to be in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.[135] In *Apex Bancrights Holdings, Inc. v. Bangko Sentral ng Pilipinas*,[136] the Court held that the Monetary Board's issuance of a resolution liquidating Export and Industry Bank (EIB) cannot be tainted with grave abuse of discretion since it was amply supported by the factual circumstances and was in accordance with prevailing law and jurisprudence:

> [T]he Monetary Board's issuance of Resolution No. 571 ordering the liquidation of EIB cannot be considered to be tainted with grave abuse of discretion as it was amply supported by the factual circumstances at hand and made in accordance with prevailing law and jurisprudence. To note, the "actions of the Monetary Board in proceedings on insolvency are explicitly declared by law to be 'final and executory.' They may not be set aside, or restrained, or enjoined by the courts, except upon 'convincing proof that the action is plainly arbitrary and made in bad faith,'" which is absent in this case.[137]

Under Section 30 of Republic Act No. 7653, only a "report of the head of the supervising or examining department" of the BSP is necessary for the Monetary Board to forbid the institution from doing business in the

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134 *Id.* at 193–194.

135 *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62, 67–68 (2007) [Per J. Corona, First Division]. (Citations omitted)

136 819 Phil. 127 (2017) [Per J. Perlas-Bernabe, Second Division].

137 *Id.* at 136.

Philippines.[138] BSP, the umbrella agency of the Monetary Board, in its capacity as government regulator of banks, and the PDIC, as statutory receiver of banks under Republic Act No. 7653, are the principal agencies mandated by law to determine the financial viability of banks, and to facilitate the receivership and liquidation of closed financial institutions.[139]

Like any administrative body, the Monetary Board and the BSP, in concluding that there were grounds for bank closure, should only have sufficient basis. Furthermore, their findings of fact must be supported by substantial evidence, thus:

> Needless to say, the decision of the MB and BSP, like any other administrative body, must have something to support itself and its findings of fact must be supported by substantial evidence. But it is clear under RA 7653 that the basis need not arise from an examination as required in the old law.
>
> We thus rule that the MB had sufficient basis to arrive at a sound conclusion that there were grounds that would justify RBSM's closure. It relied on the report of Mr. Domo-ong, the head of the supervising or examining department, with the findings that: (1) RBSM was unable to pay its liabilities as they became due in the ordinary course of business and (2) that it could not continue in business without incurring probable losses to its depositors and creditors. The report was a 50-page memorandum detailing the facts supporting those grounds, an extensive chronology of events revealing the multitude of problems which faced RBSM and the recommendations based on those findings.
>
> In short, MB and BSP complied with all the requirements of RA 7653. By relying on a report before placing a bank under receivership, the MB and BSP did not only follow the letter of the law, they were also faithful to its spirit, which was to act expeditiously. Accordingly, the issuance of Resolution No. 105 was untainted with arbitrariness.[140]

The Monetary Board is entrusted with the appreciation and determination of whether any or all the statutory grounds for the closure and receivership of an erring bank are present.[141] Its findings of facts are accorded great weight on appeal, as long as such findings are supported by substantial evidence.[142]

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138 *Rural Bank of San Miguel, Inc., v. Monetary Board,* 545 Phil. 62, 70 (2007) [Per J. Corona, First Division].

139 *Apex Bancrights Holdings, Inc. v. Bangko Sentral ng Pilipinas,* 819 Phil. 127, 136 (2017) [Per J. Perlas-Bernabe, Second Division].

140 *Rural Bank of San Miguel, Inc., v. Monetary Board,* 545 Phil. 62, 73–74 (2007) [Per J. Corona, First Division].

141 *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas,* 716 Phil. 132, 150 (2013) [Per J. Mendoza, Third Division].

142 *United Coconut Planters Bank v. E. Ganzon, Inc.*, 609 Phil. 104, 119 (2009) [Per J. Chico-Nazario, Third Division].

Thus, in *General Bank and Trust Co. v. Central Bank of the Philippines*,[143] the Court held that petitioner's inability to pay is a factual finding, which is generally binding before this Court, absent any compelling reason to rule otherwise:

> [T]he issue of whether or not petitioner Genbank's inability to pay may be solely and exclusively attributable to the bank run necessarily requires passing upon and evaluating the evidence presented during the trial. It should be made perfectly clear, however, that the Court's jurisdiction in appellate proceedings under Rule 45 of the Rules of Court is, as a rule, limited to reviewing only errors of law, it not being a trier of facts. And it is a settled doctrine that findings of fact of the CA are basically binding and not be disturbed except for very compelling reasons, such as when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact of the CA are contrary to those of the trial court; (6) said findings of fact are conclusions without citation of specific evidence on which they are based; (7) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. The Court finds no cogent reason to take exception from the general rule.
>
> Even then, a review of the pleadings on record shows no signs that the CA erred in not finding that the Monetary Board violated any substantial or procedural law when it issued the two assailed resolutions. Moreover, the CA cannot also be faulted in sustaining the MB resolutions, or, to be precise, in not finding arbitrariness and capriciousness in the closure of petitioner bank.[144]

Similarly, here, whether MaxBank has insufficient realizable assets to meet its liabilities, and whether it cannot continue in business without involving probable losses to its depositors and creditors are questions of fact, which are generally binding. While the general rule admits of exceptions, the party challenging questions of fact must allege, prove and substantiate that its case clearly falls under the exception,[145] which petitioner failed to do here.

At any rate, the Monetary Board issued its Resolution prohibiting MaxBank from doing business in the Philippines based on the findings noted in the regular examination as of December 31, 2018, and the report of the BSP's Financial Supervision Department VIII and Financial System Integrity Department, the summary of which states the following:

> A. [MaxBank] [h]as insufficient realizable assets to meet its liabilities
>
> Estimated realizable value of the Bank's assets of ₱312.5 Million is not sufficient to meet its liabilities of ₱342.3 Million, resulting in a net realizable value (NRV) of negative ₱29.8 Million.

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143 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

144 *Id.* at 255–254.

145 *Pascual v. Burgos, et. al.*, 776 Phil. 167, 182–184 (2016) [Per J. Leonen, Second Division].

B. [MaxBank] [c]annot continue in business without involving probable losses to its depositors and creditors.

1. Negative CAR and negative adjusted capital and chronic capital deficiencies

The Bank has been incurring chronic capital deficiencies since 2013:

	As of 31 December					
	2018	**2017**	**2016**	**2015**	**2014**	**2013**
Adjusted capital (in Millions)	P(16.840)	P62.717	P(11.179)	P(8.903)	P32.483	P45.792
Minimum Capital Requirement (In Millions)	P300.000	P300.000	P52.000	P52.000	P52.000	P52.000
Capital Deficiency (In Millions)	P316.840	P237.283	P63.179	P60.903	P19.517	P6.208

As of 31 December 2018, CAR of negative 5.0 percent and adjusted capital of negative P16.8 million translate to a capital deficiency of P316.8 million to comply with the minimum 10 percent CAR and minimum capital requirement of P300.0 million for a thrift bank with head office and three (3) branches located outside the National Capital Region (NCR) and one (1) BLU within NCR, respectively. Even if the Deposit for Stock Subscription (DSS) amounting to P236.3 Million is considered as capital, the resulting adjusted capital of P219.5 Million will still be deficient by P80.5 million to meet minimum capital requirement. DSS is not considered as part of equity in this examination since it is reported by the Bank as part of "Other Liabilities". Further, the Bank failed to satisfactorily explain the source of funds and violation of the limits on individual and aggregate foreign stockholdings, to wit:

a. Results of capital verification disclosed that the P300 Million funds infused in the Bank were sourced from two (2) Malaysian nationals: Mr. Gan Siong Thau, [a.k.a.] Rey Gan, and Mr. Yeap Zong Xin, [a.k.a.] Rex Yeap – whose names are not in the list of directors, officers and stockholders of UWIL, CMGL and DHPI, the third party investors approved by the BSP.

b. The Bank justified that the P300 Million was sourced from Messrs. Gan and Yeap because the funds were payments for the satisfaction of a the Share Purchase Agreement dated 17 July 2017 of Alphawell Land (AWIL) which is owned by Ms. Hui Nai Yuk August, wife of Mr. Ka Siu Johnny Tang (also the sole stockholder of UWIL) for the amount of USD 6.0 million for one (1) share of AWIL to Mr. Gan together with his business partner, Mr. Yeap. However, there were inconsistencies noted on the proportionality on the value of AWIL of $389.39 (exact amount) presented to the BSP vis-à-vis the purchase price of [USD]6.0 million, and lack of supporting evidence that Mr. Yeap is a party to the said share purchase agreement of AWIL.

c. The actual execution of the sale/transfer of shares transaction is in violation of Section 122 of the MORB on Limits of Stockholdings in a Single Bank (i.e., the ceilings on individual and aggregate foreign stockholdings) since the funds were not contributed by UWIL, CMGL

and DHPI on a 40-20-40 ratio as approved by the BSP, but came from only one source, i.e., the proceeds of the sale of AWIL.

Another serious supervisory concern was the noted attempt to withdraw a portion of the capital infusion through two loan applications (undated loan application form amounting to P80 million and loan application form dated 26 September 2018 amounting to P70 million) both applied by Milestone2u Property, Inc. (Affiliate of Milestone2u PTE.LTD.) which is owned by Messrs. Rey Gan, Rex Yeap, and Ms. Joy B. Abalon, major stockholder of DHPI.

Stockholders failed to adhere in the Board-approved capital call made by the Board and President/CEO on 28 September 2018 to be complied with on or before 30 November 2018. Contrary to their commitment before the BSP as investors, the existing stockholders are not inclined to infuse fresh capital to address the capital deficiency as shown in the Bank's reply that there are ongoing negotiations with a new investor (identified as "OK Coin", a listed company on Hongkong). Lack of viable business plan to turn around the Bank's deteriorating financial condition has resulted in negative retained earnings for the last five (5) consecutive years (i.e., 2014-2018), with accumulated deficit of negative 263.0 million as of 31 December 2018 due to chronic net losses since 2013. Said factors have persistently prevented the accumulation of capital resulting in Bank's difficulty to comply with the prescribed capital requirements.

2. Chronic Net Losses

Earnings are critically deficient. The Bank has been chronically incurring net losses from 2013 to 2018, or for the last six (6) consecutive years, due to lack of strategic planning, deficient lending operation and failure to practice fiscal restraint to manage non-interest expenses.

	(Amounts in Million)					
Year	**2018***	**2017****	**2016****	**2015****	**2014****	**2013****
Net Loss	₱(63.317)	₱(37.103)	₱(45.578)	₱(36.553)	₱(30.106)	₱(10.163)

* *Adjusted figures after considering this RE's adjustments*

** *Based on reported/certified balances*

Said chronic net losses have exhausted the Bank's retained earnings which already amount to negative ₱263.0 million as of 31 December 2018. For the year ended 31 December 2018, the Bank posted an adjusted net loss of ₱63.3 million with net interest margin amounting to ₱15.0 million while non-interest expenses (excluding provision for credit losses) amounted to ₱72.5 million. Losses are unlikely to be reversed in view of the existence of U or U banking and the Board and Management's failure to adopt strategic initiatives to improve core earnings.

The root cause of the Bank's chronic losses is fundamentally flawed and unattainable business model. The Bank is gearing towards digital banking business but failed to meet the requirements in order to obtain the necessary authorities and/or licenses.

3. Violation of Section 274 of the Manual of Regulation for Banks (MORB) on Servicing Deposits outside Bank Premises

The Bank violated Section 274 of the Manual of Regulations for Banks (MORB) on Servicing Deposits Outside Bank Premises by soliciting and accepting deposits outside banking premises without BSP approval.

Pursuant to Section 274 of the MORB, a bank may solicit and accept deposits outside of its premises through its employees subject to approval by the Deputy Governor, of the appropriate Sector of the Bangko Sentral. However, the Bank has no application for approval of the Deputy Governor prior to conducting said activities.

4. Unsafe or Unsound (U or U) Banking

The Bank has engaged in the following findings of U or U banking:

a. Engaging in hazardous lending and lax collection policies and practices, evidenced by questionable loan releases to Livingwater System, Inc., aggregating ₱55.0 million in March and October 2018, due to inadequate documents to support capacity to pay, unsupported and unauthorized release of loan proceeds, absence of loan utilization check, gross deviation from loan term agreement, and inconsistent documentation;

b. Opening of accounts of foreign nationals who appear to be connected with an entity (MBI Group and its concerned directors/officers) involved in several criminal and money laundering charges before competent authority (Malaysian government), without observing the required customer due diligence, in gross violation of internal policy and Anti-Money Laundering (AML)/Combating the Financing of Terrorism (CFT) laws and regulations, which will result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity, or solvency of the Bank; and

c. Operating with grossly inadequate AML/CFT framework which renders the Bank likely to be used as a money laundering conduit.

In the Initial Advisory Letter (IAL) dated 1 August 2019, signed jointly by the Acting Head of FSD VIII and Director of FSID, the Bank and its BOD and Management were directed to immediately stop from engaging in such unsafe or unsound banking and other related acts which may result in the same finding of unsafe or unsound banking, and violating Section 274 of the MORB on Servicing Deposits Outside Bank Premises, with a warning that failure of which shall subject the Bank to further supervisory actions. The Bank, in its letters dated 20 August, 20 September, 19 September and 26 September 2019 submitted replies on the aforementioned U or U banking and violation of Section 274 of the MORB, which FSD VIII and FSID duly acknowledged in joint letters dated 29 August, 16 September, 26 September and 3 October 2019, respectively, with a reiteration of the directive to stop said U or U banking and violation of Section 274 of the MORB. Evaluation of the Bank's representations, however, disclosed that the same are not acceptable.

Hence, the Monetary Board, in its Resolution No. 1569 dated 10 October 2019, has confirmed (i) the finding that MAXSB is engaged in the abovementioned U or U banking; and (ii) the action of the FSD VIII and FSID directing the Bank to immediately stop violating Section 274 of the MORB. The Bank was informed of the same in the joint FSD VIII and FSID letter dated 15 October 2019. In addition, pursuant to MB Resolution No.

> 1615 dated 17 October 2019, the Bank was directed to refrain from operating its BGC BLU in view of its non-compliance with the prudential criteria prescribed under Section 111 of the MORB.
>
> 5. Weak Board and Management Oversight and Risk Management System
>
> Overall risk exposure is high and increasing in view of weak risk management system and critically deficient Board and Management oversight. The members of the Board and Management, who are responsible for oversight, identification and management of risks, are disregarding internal policies, procedures and internal controls. Override of policies, procedures and internal controls is denoted in the irregularity on the approving authority of the U or U banking of opening of accounts of foreign nationals who appear to be connected with an entity (MBI Group and its concerned directors/officer) involved in several criminal and money laundering charges before competent authority (Malaysian government) and in violation of servicing deposits outside bank premises. Internal policies and procedures are either inadequate or lacking to ensure that risks are being managed. Internal audit function is also weak.
>
> Compliance risk is high and increasing due to alarming pattern of disregard of laws, rules and regulations and BSP directives including, but not limited to, non-compliance with the approved MOU, unauthorized servicing of deposits outside bank premises, new findings of U or U banking particularly on anti-money laundering and violation of ceiling on single borrower's limit and uncorrected previous BSP examination findings.
>
> 6. Non-compliance with the approved MOU
>
> Despite lapse of ample time since the Bank was reinitiated into the PCA framework on 9 October 2014, the Board and Management still has not addressed the root causes of the Bank's re-initiation into the PCA framework, including deficient capital, deteriorating operating performance/chronic losses, and weak corporate governance reforms. [146]

Even petitioner admits of questionable transactions made by MaxBank: "[A]ll [Third-Party Investors (TPI)] were incorporated only a month before they have submitted their application to acquire [MaxBank] on 15 March 2017. Further, all TPI are shell companies meaning they do not have any operations and exist only in name as a vehicle for another company's operation. . . [t]wo (2) of the three (3) TPI were incorporated in the British Virgin Islands, which is a red-flag for money-laundering. With regard to DLOH, it would appear that its four (4) Filipino incorporators/directors, were mere dummies for they do not attend any shareholders meetings of [MaxBank]."[147] Further, MaxBank's external auditor opined that the financial statements noted incurred losses amounting to "Php63.9 Million and Php48.6 Million in 2018 and 2017, respectively, resulting to retained deficits amounting to Php264.5 Million and Php200.6 Million as of 31 December 2018 and 31 December 2017, respectively. Accordingly, the Bank sustained capital deficiency of Php11.6 million as of 31 December 2018."[148] According

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[146] *Rollo*, pp. 152–156.
[147] *Id.* at 34. Citations omitted.
[148] *Id.* at 151.

to the external auditor, these conditions indicate the existence of uncertainties, which may affect MaxBank's ability to continue as a going concern.[149]

It must be stressed that the BSP, through the Monetary Board, is vested with exclusive authority to assess, evaluate and determine the condition of any bank, and in light of reasonable grounds, forbid bank or non-bank financial institutions to do business in the Philippines.[150] The authority of the Monetary Board to close banks and liquidate them when public interest so requires is an exercise of the police power of the State, and considered final and executory.[151] It may be subject to judicial inquiry and can only be set aside if found capricious, discriminatory, whimsical, arbitrary, unjust, or simply with grave abuse of discretion amounting to lack or excess of jurisdiction.[152]

Considering the circumstances in this case, petitioner failed to prove that the BSP, through the Monetary Board, acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in prohibiting MaxBank from doing business in the Philippines.

On a final note, banking institutions are businesses imbued with public interest, such that the general public's trust and confidence in the system is of paramount importance.[153] Thus, they are required to exercise the highest degree of diligence.[154] The fiduciary nature of banks imposes upon them the highest standards of integrity and performance.[155]

FOR THESE REASONS, the Petition is **DENIED** for lack of merit. The September 3, 2020 Decision and November 24, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 164310 are **AFFIRMED.**

This Court also **NOTES** the November 13, 2024 Manifestation filed by petitioner.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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149 *Id.*

150 *Miranda v. PDIC,* 532 Phil. 723, 730–731 (2006) [Per J. Ynares-Santiago, First Division].

151 *Id.*; *Vda. De Ballesteros v. Rural Bank of Canaman, Inc.,* 650 Phil. 476, 491 (2010) [Per J. Mendoza, Second Division]; *Rural Bank of San Miguel, Inc., v. Monetary Board,* 545 Phil. 62, 67–68 (2007) [Per J. Corona, First Division].

152 *Id.*

153 *Apolinario v. People,* 913 Phil. 497, 513 (2021) [Per J. Leonen, Third Division]. (Citation omitted)

154 *Id.* at 497.

155 Republic Act No. 8791 (2000), sec. 2.

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was as assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice