THE DOLLAR MARGIN LAW: A BRIEF APPRAISAL

INTRODUCTION.

After all the discussions on the merits and demerits of the controversial Marginal law which is now a fact, there is no point any longer in "protesting" against it; the only thing advisable to do is to make it operate as effectively as it was intended to do, so it could achieve its primary objective of stabilizing the economy.[2]

It cannot be denied that "interference" with or control of our economic life like this is inevitable if not necessary. The Central Bank under this Act is given power[3] to preserve the international value of the peso and the convertibility of the peso.

Inasmuch as the international reserves of the Philippines have reached such a low level as to require remedial action beyond that provided in Republic Act No. 265,[4] in spite of exchange controls which have been in force since 1949[5] it was thought best by the legislature to meet the situation by the enactment of this law. The low level of our international reserves has persisted to stand still or has even gone on the decline. The means and the measures presently authorized in the Charter of the Central Bank for dealing with the balance of payments problem have been found inadequate[6] as to require further enactments.

The marginal law on foreign exchange came into being under different names.[7] It had its start as House Bill No. 3663. Its Senate counterpart was Senate Bill No. 457. Both Houses of Congress met for days in their respective Chambers discussing the bill. After some deliberations the appointed Committees of both Houses came to an agreement that House Bill No. 3663 was to be converted into a law rather than Senate Bill No. 457 so to allay fears or possibility of a question of constitutionality (if the law is a tax measure) since the Constitution's mandate is that bills of revenue or tax nature must originate in the lower House. Thus, after threshing out objections of the Houses the House Bill No. 3663 became Republic Act No. 2609.

1 R. A. No. 2609. An Act to Authorize the Central Bank of the Philippines to Establish a Margin over Banks' Selling Rates of Foreign Exchange.

2 MANILA BULLETIN, July 23, 1959.

3 See Central Bank Circular No. 95, July 17, 1959; Monetary Board Resolution No. 948, July 23, 1959.

4 An Act Establishing the Central Bank of the Philippines, Defining its Powers in the

5 S. No. 457, Explanatory Note.

6 Supra. note 5

7 THE MANILA TIMES, July 9, 1959. "What is my name? That is the $64 dollar question for today. So just relax and I won't delay telling you what's my name. First they called me exchange tax, Then they called me premium exchange, Later they change it to margin on foreign exchange, So how the heck will I know what's my name? What's my name? I repeat That you leave to me But for the fun of it, Just call me C. B. honey."

PHIL. CONST., sec. 18. All appropriation, revenue, or tariff bills of local application and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

This law is a limit on foreign exchange on certain transactions[9] to last within the period of 4 years and placed at the minimum of 25% and which will be increased to the maximum of 40% under stated-existing conditions[10] with an accompanying punitive measure.[11]

An analysis is here made of the law as to the good our people will derive from it, the weight of its good points as against the bad points and the risks to be assumed.

IMPORTANCE.

The Philippines is faced with the aged problem of economic alleviation of the common man. It is up to the Filipinos to promote this and to use their fullest initiative in order to achieve sometime in the future self-sufficiency as a nation,[12] but to do so there must be set a favorable foundation and atmosphere of stability. Economic development cannot be sustained over a period of years at a satisfactory rate without stability. Any country that pursues development hand in hand with inflation [13] and currency instability will only discover that it is building a collosus with feet of clay, which will topple into ruin at the slightest change in the economic wind. The influence of currency stability or instability on investment and capital formation is no far-fetched economic notion.[14] It is real and vital to our economic life. For instance if the people had no confidence that the value of the peso would remain reasonably stable in the years to come, they would rather spend it on consumption today than save, and invest it in the hope of enjoying its fruits in some later date.[15] The Filipinos as a whole are timid to face or embark on hazardous ventures without stability.

The marginal law evolved from the desire to arrest inflation and to recover and maintain the stability of the peso and insure and preserve its external convertibility by balancing Philippine payments and bolstering the reserves.[16] The law seeks to shore up the government's stabilization program by collecting margin taxes on foreign exchange not exempted by the law. The start off rate is 25%. The purpose of placing the rate at 25% is to cushion the impact of the measure on the prices of commodities.[17] The move to stabilize the fiscal position of the country is a solution to salvage the Country's tottering economy.[18]

The purpose of this law is to provide the Central Bank with an additional instrument for effectively coping with the problem and achieving domestic and international stability of our currency. The additional instrument of the Central Bank action provided for by this law consists of a cost restriction on all imports,

9 R. A. 2600, sec. 1.
10 See, supra, see 1, sec. 2.
11 See, supra, sec. 8.
12 See, Pres. Carlos P. Garcia, Margate System of Rice Planting.
13 Increase of money supply and produce a rise in the price level but value of money goes down.
14 MANILA BULLETIN, August 12, 1959.
15 Supra, note 14.
16 Senate Diario No. 3, June 3, 1959.
17 MANILA CHRONICLE, July 15, 1959.
18 Supra, note 17.

as well as invisibles to reduce the effective demand for foreign exchange. The proceeds that may accrue to the Central Bank from the margin will be distributed in accordance with the provisions of section 41 of the Bank's Charter:[19]

> "Sec. 41. Distribution of net profits. — Within the first 60 days following the end of each fiscal year, the Monetary Board shall determine and carry out the distribution of the net profits in accordance with the following rules:
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> "(a) 25% of the net profits shall be carried to surplus until such time as the total capital accounts of the Bank reach a sum equivalent to at least 10% of the total assets of the Bank less its assets in gold and foreign currencies;
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> "(b) Any net profits remaininng after fulfilling the conditions established in subsection (a) of this section shall be used to increase the resources of the Securities Stabilization Fund, until the volume and liquidities of the Fund's assets are considered ample for any open market operations in which the Fund is deemed likely to engage;
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> "(c) Any net profits remaining after fulfilling the conditions of subsections (a) and (b) of this section shall be used to reduce the Account to Secure the Coinage or the Monetary Adjustment Account, until said accounts shall have been liquidated. The Monetary Board shall determine the distribution between these two accounts;
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> "(d) If any net profits remain after fulfilling the conditions of subsection (a), (b) & (c) of this section the balance or any part thereof may be transferred to surplus, or may be used to liquidate government obligations to the Central Bank, or may be paid into the General Fund of the Government. The Monetary Board shall determine the distribution."
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> The effect of this bill will be as follows:

The rate for import of goods and services will continue to be banks' selling rate as determined under section 79 of Republic Act No. 265, which provides thus:

> "Sec. 79. Rates applicable to purchase and sales of exchange of the banks. — The Monetary Board shall determine the minimum and maximum rates at which the banks may buy spot exchange, and the maximum rates at which they may sell spot exchange but the rates thus established or such currency shall not differ from the respective legal parity by more than 1%, unless in any given case a greater divergence from parity exists in foreign markets. The banks shall not collect any additional commissions or charges other than actual telegraphic or cable costs incurred by them.
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> "The rates to be used by the banks for other type of exchange transactions shall be based on their spot exchange rates and shall not differ from such rates by margins greater than those considered reasonable by the Monetary Board: Provided, however, That the Board may at any time specifically fix such margins. The Monetary Board shall issue such rules and regulations as may be necessary to implement the provisions of this paragraph.
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> The rates established in accordance with the provisions of this section shall not apply to exchange transactions with the Central Bank. Such transactions shall be made at the rates established in accordance with the provisions of section 76 of this Act."

19 S. No. 457, Explanatory Note; R. A. No. 265.

With the margin fixed at 25% by the Monetary Board, the computation for the sale of 1,000 dollars allocated to a license will be as follows: 1,000 dollars multiplied by ₱2.02 (the bank's selling rate) equals ₱2,020.00. The amount of ₱2,020.00 will then be multiplied by the 25% margin, which amounts to ₱505. The margin of ₱505 will then be added to ₱2,020.00 so that the licensee will have to pay the total amount of ₱2,525.00 as the price of 1,000 dollars.[20]

Success in the law's careful and coordinated implementation will mean stable economic growth in terms of the general welfare. The welfare of the people should be at all times the guiding policy of the laws. The promotion of the "general welfare" is one of the primary aims of our government as stated in the preamble of the Constitution. The term "general welfare" though vague in scope, covers among other things, measures and and services conducive to the safety, the health, the happiness, the comfort, and the posterity of the country and its people. Its primary concern is the well being of the group, the social good, rather than the welfare of just one individual or a particular group of individuals. It means the economic advancement or social uplift of the nation.[21] It is clear therefore that the economic advancement of society has been made a concern of the government established by the Constitution.[22] This conclusion is further supported by by the provision which declares that "the promotion of social justice to insure the well being and economic security of all the people should be the concern of the State".[23] To this end, the government comes in to promote this concern. In our present situation the government saw fit, as one of the means to that end, to pass the marginal law.

The present Philippine economic situation is underproduction and overspending or deficit spending resulting in inflation. The social injustice and economic dislocation that is wrought by inflation and monetary "crisis" is known and is even felt at present. To solve the situation, the people must show national discipline and national self-sacrifice and should suffer temporary inconveniences for a better future[24] What is needed to implement the the law is a little less self-interest and a little more civic-minded understanding and cooperation.

The importance of the law is praiseworthy but such is one side of the matter.

OBJECTIONS:

The law has stirred a lot of protests from the business world, government critics and "economists" and still stands as a controversial topic whenever anything on wealth, currency is spoken of because the law affects many interests.

An examination of the objection to the law is here made only as a matter of academic "study" since the law (in so far as the House of origin is concerned) is in accordance with the Constitution and any further protest is a bit too late to prevent its enforcement.

20 See, note 5.
21 SINCO, PHIL. POL. LAW 114, 115 (10th ed. 1954).
22 Phil. L. J., Economic Controls and the Constitution 597 (1957).
23 PHIL. CONST., Art. 11, sec. 5.
24 Senate Diario No. 10, June 12, 1959.

What is significant with all these wranglings about the Bill in legislative halls as well as elsewhere is the awareness by our national leaders that the national fiscal and monetary policies of the Philippines need a rational reappraisal.

Objection is primarily made on the ground that it violates the Laurel-Langley Agreement. This objection came about when the question of whether the bill is a tax or monetary measure arose. The proponents of the bill insist that it is a monetary measure whose objectives are: to arrest inflation, to recover and maintain the stability of the peso, and to insure and preserve its external convertibility.[25] However the opposers hold that it is a tax measure and as such it violates the provisions of the Laurel-Langley Agreement wherein the Philippine Government assumed a commitment not to impose any tax on foreign exchange; that technically, the bill is a monetary measure — the uniform application of the margin to all sales foreign exchange — but with the exemptions or variations, its tax nature is obvous; that the sponsors of the bill seemed to have disregarded the Agreement, by providing the exemptions, because they are convinced that this bill will work hardship upon the people, and they intend to reduce the hardship by the exemptions. This objection is plausible and there is great reason to doubt the law's monetary nature. In fact the legislature in enacting the law was noncommittal as to its nature; they referred to it as the "uniform margin" on foreign exchange; and to avoid any question of constitutionality in the future (if a tax measure) as to its House of origin, the legislative members (who themselves seemed to be confused) agreed that the bill be sponsored by the House of representatives.

Another objection is that the dollar margin bill will spiral prices upward and consumers will suffer. The very enactment of the price control law indicates that the sponsors of the bill themselves anticipated this result.

In answer to the objection that the law violates the Agreement, we can only say that the law is in form a monetary measure and does not in any way violate it.

Ills or "irritants" in our economy such as graft, corruption, market misdemeanors and other disturbances are part of a free enterprise economy such as the Philippines. Definitely these are not negative signs of economic retrogression and stagnation. These are positive signs of growth. The danger is not the presence of these conditions but the stoppage of the period of growth due to discouragement among the leadership class of the population.[26]

To lessen this pessimism the admininstration trimmed its appropriation to a total of ₱80 million. The budgetary reduction, like the price control law, complements the margin law. The first is the desire to cut down on expenses by way of neutralizing fresh inflationary pressures arising from the operation of the unprecedented bank margin. The second is intended to create at least a healthy psychological effect in the price situation, if not provide practical measures to put profiteers and hoarders behind bars.[27]

25 Senate Diario No. 20, June 29, 1959.
26 Central Bank News Digest, July 21, 1959.
27 THE MANILA TIMES, July 18, 1959.

On the other hand, Congress agreed to reduce public borrowing or bond issuing from ₱200 million to ₱67.3 million and only ₱30 millions of it will be supported by the Central Bank instead of the ₱88 millions it was previously supposed to do.[28]

The stabilization program handed out in the form of the marginal law is not so bad as it sounnded from the news reports and from the criticisms made by governmnent critics. With the rate at 25% instead of 40% there may be less business failures, and greater assurance of curbing inflation since government expenditures would be cut and public borrowing slashed to a minimum.[29]

CONCLUSION:

The law analyzed from the light of an open mind will find no ground for serious objections. The objections, if noteworthy at all, affected a negligible group of individuals. "Individuals have many interests for which they claim protection from the law, and which the law will recognize as worthy of protection . . ."[30] "In every society there are interests that are recognized and protected by law. However, human nature being what it is, it is inevitablo that these interests sometimes conflict with one another and give rise to controversies. If society is to be preserved and the social order maintained, it is essential that these conflicting interests be adjusted and balanced in a manner that is just."[31] "The catalogue of interests may be as long as the list of legitimate human desires but not the least of them must be the desire to do what one pleases, without restraint and without undue consideration for the interests and claims of others. The object of the law is to promote the 'greatest happiness of the greatest number', which by common consent is the object of society."[32]

The law does not pretend to be flawless but its advantages are quite encouraging enough to meet the present situation.

There are high hopes in fact from the reports of Central Bank Governor Miguel Cuaderno to the President on the first month of its operation that, contrary to grave warnings, commodity prices were decreasing instead of spiraling, export was increasing, and tax collections continued to be higher than last year's. The encouraging effects of the law gave lie to critics who foresaw economic chaos if the margin will be imposed.[33]

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28 MANILA BULLETIN, July 23, 1959.
29 Supra, note 28.
30 See PROSSER, TORTS 15-18.
31 See JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 20 (1958).
32 Supra, notet 30: see also HARPER, TORTS 8-6.
33 THE MANILA TIMES, August 31, 1959.