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The Court therefore agrees with the Solicitor-General that respondent Hernando is guilty of violation of the Canons of Professional Ethics by representing clients with conflicting interests. We believe, however, that a heavier penalty is appropriate.

ACCORDINGLY, the Court Resolved to *SUSPEND* Atty. Harold M. Hernando from the practice of law for a period of five (5) months, with a *WARNING* that repetition of the same or similar offense will warrant a more severe penalty. A copy of this Resolution shall be furnished to all courts and to the Office of the Bar Confidant and spread on the personal record of respondent.

Fernan, C.J. (Chairman), Gutierrez, Jr., Feliciano, Bidin, and *Davide, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 79926-27. October 17, 1991]

STATE INVESTMENT HOUSE, INC. and STATE FINANCING CENTER, INC., *petitioners, vs.* **CITIBANK, N.A., BANK OF AMERICA, NT & SA, HONGKONG & SHANGHAI BANKING CORPORATION, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATIONS; FOREIGN CORPORATIONS; CONCEPT. — Foreign corporation under Section 123 of the Corporation Code is "one formed, organized or existing under laws other than those of the Philippines and * * * (which) laws allow Filipino citizens and corporations to do business * * *."

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2. TAXATION; NATIONAL INTERNAL REVENUE CODE; RESIDENT FOREIGN CORPORATION; DEFINED. — The National Internal Revenue Code declares that the term "'resident foreign corporation' applies to a foreign corporation engaged in trade or business within the Philippines," as distinguished from a "'non-resident foreign corporation' * * * (which is one) not engaged in trade or business within the Philippines."

3. MERCANTILE LAW; OFFSHORE BANKING LAW; (PRESIDENTIAL DECREE NO. 1034); BRANCHES, EXTENSION OFFICES OR ANY OTHER UNITS OF FOREIGN CORPORATION OR FOREIGN JURIDICAL PERSON OPERATING IN THE PHILIPPINES, CONSIDERED RESIDENTS OF THE PHILIPPINES. — The Offshore Banking Law, Presidential Decree No. 1034, states "that branches, subsidiaries, affiliation, extension offices or any other units of corporation or juridical person organized under the laws of any foreign country operating in the Philippines shall be considered residents of the Philippines.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; NON-AVAILABILITY OF THE REMEDY AGAINST FOREIGN CORPORATION LICITLY DOING BUSINESS IN THE PHILIPPINES." — This Court itself has already had occasion to hold that a foreign corporation licitly doing business in the Philippines, which is a defendant in a civil suit, may not be considered a *non-resident* within the scope of the legal provision authorizing attachment against a defendant "*not residing in the Philippines Islands*"; in other words, *a preliminary attachment may not be applied for and granted solely on the asserted fact that the defendant is foreign corporation authorized to do business in the Philippines* — and is consequently and necessarily, "a party who resides out of the Philippines." Parenthetically, if it may not be considered as a party not residing in the Philippines, or as a party who resides out of the country, then, logically, it must be considered a party who does reside in the Philippines, who is a resident of the country.

5. MERCANTILE LAW; CORPORATIONS; FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES, CONSIDERED RESIDING IN THE COUNTRY. — The assimilation of foreign corporations authorized to do business in the Philippines "to the status of *domestic corporation*,"

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subsumes their being found and operating as corporations, hence, residing, in the country.

6. ID.; ID.; RESIDENCE OF A CORPORATION, CONSTRUED. — The same principle is recognized in American law: that the "*residence of a corporation*, if it can be said to have a residence, *is necessarily where it exercises corporate functions* * * *"; that it is considered as dwelling "in the place where its business is done * * *," as being "located where its franchises are exercised * * *,"and as being "present where it is engaged in the prosecution of the corporate enterprises"; that a "foreign corporation licensed to do business in a state is a resident of any country where it maintains an office or agent for transaction of its usual and customary business for venue purposes"; and that the necessary element in its signification is locality of existence." Courts have held that "a domestic corporation is regarded as having a residence within the state at any place where it is engaged in the particulars of the corporate enterprise, and not only at its chief place or home office"; that "a corporation may be domiciled in one state and resident in another; its legal domicile in the state of its creation presents no impediment to its residence in a real and practical sense in the state of its business activities.

7. ID.; INSOLVENCY LAW; OMISSION IN THE PETITION OF EXPLICIT STATEMENT THAT PETITIONERS ARE RESIDENTS OF THE PHILIPPINES, NOT FATAL WHERE THERE IS AN ALLEGATION THAT THEY ARE FOREIGN BANKING CORPORATIONS DOING BUSINESS IN THE COUNTRY THROUGH THEIR BRANCH OFFICES OR AGENCIES. — Neither can the Court accept the theory that the omission by the banks in their petition for involuntary insolvency of an explicit and categorical statement that they are "residents of the Philippine Islands," is fatal to their cause. In truth, in light of the concept of resident foreign corporations just expounded, when they alleged in that petition that they are foreign banking corporations, licensed to do business in the Philippines, and actually doing business in this country through branch offices or agencies, they were in effect stating that they are resident foreign corporations in the Philippines.

8. ID.; CORPORATIONS; SECTION 123 OF THE CORPORATION CODE, CLARIFIED. — The petitioners next argue that "Philippine law is emphatic that only foreign

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corporations whose own laws give Philippine nationals reciprocals rights may do business in the Philippines." As basis for the argument they invoke Section 123 of the Corporation Code which, however, does not formulate the proposition in the same way. Section 123 does not say, as petitioners assert, that it is required that the laws under which foreign corporations are formed "give *Philippine nationals reciprocal rights*." What it does say is that the laws of the country or state under which a foreign corporation is "formed, organized or existing * * * allow *Filipino citizens and corporations to do business in its own country or state*," which is not quite the same thing.

9. ID.; INSOLVENCY LAW; EFFECTS OF BANKRUPTCY PROCEEDINGS NOT INFLUENCED BY MOTIVES OF PETITIONERS. — The effects of the institution of bankruptcy proceedings on all the creditors of the alleged bankrupt are clearly spelled out by the law, and will be observed by the Insolvency Court regardless of whatever motives — apart from the desire to share in the assets of the insolvent in satisfying its credit — that the party instituting the proceedings might have.

10. ID.; GENERAL BANKING ACT; FAILURE TO INCORPORATE BRANCHES OF FOREIGN BANKS IN THE PHILIPPINES DOES NOT SIGNIFY INTENTION TO CONTINUE AS RESIDENTS OF THEIR RESPECTIVE STATES. — Still another argument put forth by the petitioners is that the three banks' failure to incorporate their branches in the Philippines into new banks in accordance with said Section 68 of the General Banking Act connotes an intention on their part to continue as residents of their respective states of incorporation and not to be regarded as residents of the Philippines. The argument is based on an incomplete and inaccurate quotation of the cited Section. What Section 68 required of a "foreign bank presently having branches and agencies in the Philippines, * * * within one year from the effectivity" of the General Banking Act, was to comply with *any of three (3) options, not merely with one sole requirement.* 1) (*that singled out and quoted by the petitioners, i.e.:*) "incorporate its branch or branches into a new bank in accordance with Philippine laws * * *; or 2) "assign capital permanently to the local branch with the concurrent maintenance of a 'net due to' head office account which shall include all

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net amounts due to other branches outside the Philippines, in an amount which when added to the assigned capital shall at all times be not less than the minimum amount of capital accounts required for domestic commercial banks under section twenty-two of this Act"; or 3) "maintain a 'net due to' head office account which shall include all net amounts due to other branches outside the Philippines, in a amount which shall not be less than the minimum amount of capital accounts required for domestic commercial banks under section twenty-two of this Act."

11. ID.; INSOLVENCY LAW; PAYMENT OF 4.4% OF THE TOTAL INDEBTEDNESS DOES NOT RENDER CREDIT PREFERRED; CASE AT BAR. — The petitioners allege that three days before respondent banks filed their petition for involuntary insolvency against CMI, they received from the latter substantial payments on account in the aggregate amount of ₱6,010,800.00, with the result that they were "preferred in the distribution of CMI's assets thereby defrauding other creditors of CMI." *Non sequitur*. It is in any case a circumstance that the Bankruptcy Court may well take into consideration in determining the manner and proportion by which the assets of the insolvent company shall be distributed among its creditors; but it should not be considered a ground for giving the petition for insolvency short shrift. Moreover, the payment adverted to does not appear to be all that large. The total liabilities of CMI to the three respondent banks as of December, 1981 was ₱21,531,336.91, and US $14,485,814.85. Converted into Philippine currency at the rate of ₱7.899 to the dollar, the average rate of exchange during December, 1981, the dollar account would be ₱114,423,4521.50. Thus, the aggregate liabilities of CMI to the banks, expressed in Philippine currency, was ₱135,954,788.41 as of December, 1981, and therefore the payment to them of ₱6,010,800.00 constituted only some 4.42% of the total indebtedness.

APPEARANCES OF COUNSEL

Roco, Bunag, Kapunan & Migallos for petitioners.

Agcaoili & Associates for Citibank, N.A. and Bank of America NT & SA.

Belo, Abiera & Associates for Hongkong & Shanghai Banking Corp.

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D E C I S I O N

NARVASA, *J.*:

The chief question in the appeal at bar is whether or not foreign banks licensed to do business in the Philippines, may be considered "*residents of the Philippine Islands*" within the meaning of Section 20 of the Insolvency Law (Act No. 1956, as amended, eff. May 20, 1909) reading in part as follows:[1]

"An adjudication of insolvency may be made on the petition of three or more creditors, *residents of the Philippine Islands*, whose credits or demands accrued in the Philippine Islands, and the amount of which credits or demands are in the aggregate not less than one thousand pesos: Provided, that none of said creditors has become a creditor by assignment, however made, within thirty days prior to the filing of said petition. Such petition must be filed in the Court of First Instance of the province or city in which the debtor resides or has his principal place of business, and must be verified by at least three (3) of the petitioners. * * *."

The foreign banks involved in the controversy are Bank of America NT and SA, Citibank N.A and Hongkong and Shanghai Banking Corporation. On December 11, 1981, they jointly filed with the Court of First Instance of Rizal a petition for involuntary insolvency of Consolidated Mines, Inc. (CMI), which they amended four days later.[2] The case was docketed as Sp. Proc. No. 9263 and assigned to Branch 28 of the Court.

The petition for involuntary insolvency alleged:

1) that CMI had obtained loans from the three petitioning banks, and that as of November/December, 1981, its outstanding obligations were as follows:

a)	In favor of Bank of America (BA)	₱15,297,367.67
	(as of December 10, 1981)	US$ 4,175,831.88

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[1] Italics supplied.

[2] *Rollo*, pp. 12, 47-61.

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b) In favor of Citibank (as of December 10, 1981) US$ 4,920,548.85

c) In favor of Hongkong & Shanghai Bank (as of November 30, 1981); US$ 5,389,434.12 ₱ 6,233,969.24

2) that in November, 1981, State Investment House, Inc. (SIHI) and State Financing Center, Inc. (SFCI) had separately instituted actions for collection of sums of money and damages in the Court of First Instance of Rizal against CMI, docketed respectively as Civil Cases Numbered 43588 and 43677; and that on application of said plaintiffs, writs of preliminary attachment had been issued which were executed on "the royalty/profit sharing payments due CMI from Benguet Consolidated Mining, Inc"; and

3) that CMI had "committed specific acts of insolvency as provided in Section 20 of the Insolvency Law, to wit:

* * * * * * * * *

'5. that he (CMI) has suffered his (CMI's) property to remain under attachment or legal process for three days for the purpose of hindering or delaying or defrauding his (CMI's) creditors;

* * * * * * * * *

'11. that being a merchant or tradesman he (CMI) has generally defaulted in the payment of his (CMI's) current obligations for a period of thirty days; * * *."

The petition was opposed by State Investment House, Inc. (SIHI) and State Financing Center, Inc. (SFCI).[3] It claimed that:

1) the three petitioner banks had come to court with unclean hands in that they filed the petition for insolvency — alleging the CMI was defrauding its creditors, and they wished all creditors to share in its assets — although a few days earlier, they had "received for the account of CMI substantial payments aggregating ₱10,800,000.00;"

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[3] *Id.*, pp. 13, 62-74.

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2) the Court had no jurisdiction because the alleged acts of insolvency were false: the writs of attachment against CMI had remained in force because there were "just, valid and lawful grounds for the(ir) issuance," and CMI was not a "merchant or tradesman" nor had it "generally defaulted in the payment of (its) obligations for a period of thirty days * * *";

3) the Court had no jurisdiction to take cognizance of the petition for insolvency because petitioners are *not resident creditors* of CMI in contemplation of the Insolvency Law; and

4) the Court has no power to set aside the attachment issued in favor of intervenors-oppositors SIHI and SFCI.

CMI filed its Answer to the petition for insolvency, asserting in the main that it was not insolvent,[4] and later filed a "Motion to Dismiss Based on Affirmative Defense of Petitioner's Lack of Capacity to Sue," echoing the theory of SIHI and SFCI that the petitioner banks are not "Philippine residents."[5] Resolution on the motion was "deferred until after hearing of the case on the merits" it appearing to the Court that the grounds therefor did not appear to be indubitable.[6]

SIHI and SFCI filed their own Answer-in-Intervention,[7] and served on the three petitioner banks requests for admission of certain facts in accordance with Rule 26 of the Rules of Court,[8] receiving a response only from Hongkong & Shanghai Bank.[9]

SIHI and SFCI then filed a Motion for Summary Judgment dated May 23, 1983 "on the ground that, based on the pleadings and admissions on record, the trial court had no jurisdiction to adjudicate CMI insolvent since the petitioners (respondent foreign banks) are not 'resident creditors' of CMI as required under

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[4] *Id.*, pp. 83-88.

[5] *Id.*, pp. 89-94.

[6] *Id.*, pp. 14, 113.

[7] *Id.*, pp. 14, 114-122.

[8] *Id.*, pp. 14, 123-126, 127-134.

[9] *Id.*, pp. 14, 135-138.

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the Insolvency Law."[10] Oppositions to the motion were filed,[11] to which a reply was submitted.[12]

The Regional Trial Court[13] found merit in the motion for summary judgment. By Order dated October 10, 1983, it rendered "summary judgment dismissing the ** petition for lack of jurisdiction over the subject matter, with costs against petitioners."[14] It ruled that on the basis of the "facts on record, as shown in the pleadings, motions and admissions of the parties, an insolvency court could "not acquire jurisdiction to adjudicate the debtor as insolvent if the creditors petitioning for adjudication of insolvency are not 'residents' of the Philippines" — citing a decision of the California Supreme Court which it declared "squarely applicable especially considering that one of the sources of our Insolvency Law is the Insolvency Act of California of 1895 ***" And it declared that since petitioners had been merely licensed to do business in the Philippines, they could not be deemed residents thereof.

The three foreign banks sought to take an appeal from the order of October 10, 1983. They filed a notice of appeal and a *record on appeal*.[15] SIHI and SFCI moved to dismiss their appeal claiming it was attempted out of time. The Trial Court denied the motion.

SIHI and SFCI filed with this Court a petition for *certiorari* and prohibition (G.R. No. 66449), impugning that denial. The Court dismissed the petition and instead required the three banks to file a petition for review in accordance with Rule 45 of the

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[10] *Id*., pp. 14, 139-152.

[11] *Id*., pp. 15, 155-158; 159-161.

[12] *Id*., pp. 15, 162.

[13] Judge (later Court of Appeals Associate Justice) Rizalina Bonifacio Vera, presiding.

[14] *Id*., pp. 176-200.

[15] However, at this time the procedure for taking an appeal had been modified by B.P. Blg. 129 (SEE footnote 16, next following).

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Rules of Court.[16] This the banks did (their petition was docketed as G.R. No. 66804). However, by Resolution dated May 16, 1984, the court referred the petition for review to the Intermediate Appellate Court, where it was docketed as AC SP-03674.[17]

In the meantime, the Trial Court approved on May 3, 1985 the banks' record on appeal and transmitted it to this Court, where it was recorded as UDK-6866. As might have been expected, this Court required the banks to file a petition for review under Rule 45, but they asked to be excused from doing so since they had already filed such a petition, which had been referred to the Intermediate Appellate Court and was there pending as AC-G.R. No. SP 03674, *supra*. This Court then also referred UDK-6866 to the Intermediate Appellate Court where it was docketed as AC-G.R. No. CV 07830.

Both referred cases, AC-G.R. No. SP 03674 and AC-G.R. No. CV 078301 were consolidated by Resolution of the Court

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[16] BP 129, the Judiciary Reorganization Act of 1980, had become effective on August 14, 1981, Sec. 13 thereof created Regional Trial Courts" in place of Courts of First Instance, Sec. 39 thereof (a) prescribed a uniform period of appeal of fifteen (15) days from notice of all final orders, resolutions, awards, judgments, or decisions (except in *habeas corpus* cases in which the period of appeal remained at 48 hours from notice of judgment); and (b) removed the requirement of a record on appeal - except in appeals in special proceedings and in other cases where multiple appeals are allowed under applicable provisions of the Rules of Court - providing, in lieu of a record on appeal, simply for the transmission of the entire original record. The "*Interim or Transitional Rules and Guidelines Relative to the Implementation of the Judiciary Reorganization Act of 1981*" (Resolution of the Court *En Banc* dated January 11, 1983) also removed the requirement of an appeal bond (par. 18) and provided that "Appeals to the Supreme Court shall be taken by petition for *certiorari* which shall be governed by Rule 45 of the Rules of Court" (par. 25). Implementation of the Judiciary Reorganization Act as regards the new courts thereby created (Intermediate Appellate Court, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts) was authorized by Executive Order of former President Marcos issued on January 17, 1983 (see also Administrative Orders No. 1, 2 and 3, all dated January 18, 1983 issued by former Chief Justice Enrique M. Fernando).

[17] *Id.*, p. 15.

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of Appeals dated April 9, 1986, and Decision thereon was promulgated on July 14, 1987 by the Fifteenth Division of said Court.[18]

The Appellate Court reversed the Trial Court's Order of October 10, 1983 and remanded the case to it for further proceedings. It ruled:

1) that the purpose of the Insolvency Law was "to convert the assets of the bankrupt in cash for distribution among creditors, and then to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start life anew, free from the obligations and responsibilities consequent upon business misfortunes;"[19] and that it was "crystal clear" that the law was "designed not only for the benefit of the creditors but more importantly for the benefit of the debtor himself," the object being "to provide not only for the suspension of payments and the protection of creditors but also the discharge of insolvent honest debtors to enable them to have a fresh start";

2) that the Trial Court had placed "a very strained and restrictive interpretation of the term 'resident,' as to exclude foreign banks which have been operating in this country since the early part of the century," and "the better approach * * * would have been to harmonize the provisions * * * (of the Insolvency Law) with similar provisions of other succeeding laws, like the Corporation Code of the Philippines, the General Banking Act, the Offshore Banking Law and the National Internal Revenue Code in connection with or related to their doing business in the Philippines";

3) that in light of said statutes, the three banks "are in truth and in fact considered as 'residents' of the Philippines

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[18] *Rollo*, pp. 262-273, *N.B.* The judgment was written for the Division by Lapeña, Jr., *J*, with whom concurred Ejercito (Chairman) and Chua, *JJ*.

[19] Citing *William v. U.S. Fidelity & G. Co*., 236 US 549, 35 Ca. Rep. 289; *Local Loan Co. v. Hunt*, 292 US 234; *O'Brien v. Del Rosario*, 49 Phil. 657; *Phil. Trust Co. v. National Bank*, 42 Phil. 413; *Straton v. New*, 283 US 318.

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for purposes of doing business in the Philippines and even for taxation matters";

4) that the banks had "complied with all the laws, rules and regulations (for doing business in the country) and have been doing business in the Philippines for many years now;" that the authority granted to them by the Securities and Exchange Commission upon orders of the Monetary Board "covers not only transacting banking business * * * but likewise maintaining suits 'for recovery of any debt, claims or demand whatsoever"; and that their petition for involuntary insolvency was "nothing more than a suit aimed at recovering a debt granted by them to Consolidated Mines, Inc., or at least a portion thereof";

4) that to deprive the foreign banks of their right to proceed against their debtors through insolvency proceedings would "contravene the basic standards of equity and fair play, ** would discourage their operations in economic development projects that create not only jobs for our people but also opportunities for advancement as a nation"; and

5) that the terms "residence" and "domicile" do not mean the same thing, and that as regards a corporation, it is generally deemed an "inhabitant" of the state under whose law it is incorporated, and has a "residence" wherever it conducts its ordinary business, and may have its legal "domicile" in one place and "residence" in another.

SIHI and SFCI moved for reconsideration and then, when rebuffed, took an appeal to this Court. Here, they argue that the Appellate Court's judgment should be reversed because it failed to declare that —

1) the failure of the three foreign banks to allege under oath in their petition for involuntary insolvency that they are Philippine residents, wishing only to "be considered Philippine residents," is fatal to their cause;

2) also fatal to their cause is their failure to prove, much less allege, that under the domiciliary laws of the foreign banks, a Philippine corporation is allowed the reciprocal right to petition for a debtor's involuntary insolvency;

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3) in fact and in law, the three banks are not Philippine residents because.

a) corporations have domicile and residence only in the state of their incorporation or in the place designated by law, although for limited and exclusive purposes, other states may consider them as residents;

b) juridical persons may not have residence separate from their domicile;

4) actually, the non-resident status of the banks within the context of the Insolvency Law is confirmed by other laws;

5) the license granted to the banks to do business in the Philippines does not make them residents;

6) no substantive law explicitly grants foreign banks the power to petition for the adjudication of a Philippine corporation as a bankrupt;

7) the Monetary Board can not appoint a conservator or receiver for a foreign bank or order its liquidation having only the power to revoke its license, subject to such proceedings as the Solicitor General may thereafter deem proper to protect its creditors;

8) the foreign banks are not denied the right to collect their credits against Philippine debtors, only the right to "petition for the harsh remedy of involuntary insolvency" not being conceded to them;

9) said banks have come to court with unclean hands, their filing of the petition for involuntary insolvency being an attempt to defeat validly acquired rights of domestic corporations.

The concept of a foreign corporation under Section 123 of the Corporation Code is of "one formed, organized or existing under laws other than those of the Philippines and * * * (which) laws allow Filipino citizens and corporations to do business * * *." There is no question that the three banks are foreign corporations in this sense, with principal offices situated outside of the Philippines. There is no question either that said banks

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have been licensed to do business in this country and have in fact been doing business here for many years, through branch offices or agencies, including "foreign currency deposit units"; in fact, one of them, Hongkong & Shanghai Bank has been doing business in the Philippines since as early as 1875.

The issue is whether these Philippine branches or units may be considered "residents of the Philippine Islands" as that term is used in Section 20 of the Insolvency Law, *supra*,[20] or residents of the state under the laws of which they were respectively incorporated. The answer cannot be found in the Insolvency Law itself, which contains no definition of the term, *resident*, or any clear indication of its meaning. There are however other statutes, albeit of subsequent enactment and effectivity, from which enlightening notions of the term may be derived.

The National Internal Revenue Code declares that the term "'resident foreign corporation' applies to a foreign corporation engaged in trade or business within the Philippines," as distinguished from a "'non-resident foreign corporation' * * * (which is one) not engaged in trade or business within the Philippines."[21]

The Offshore Banking Law, Presidential Decree No. 1034, states "that branches, subsidiaries, affiliation, extension offices or any other units of corporation or juridical person organized under the laws of any foreign country operating in the Philippines shall be considered residents of the Philippines."[22]

The General Banking Act, Republic Act No. 337, places "branches and agencies in the Philippines of foreign banks *** . (which are) called Philippine branches," in the same category as "commercial banks, savings associations, mortgage banks, development banks, rural banks, stock savings and loan associations" (which have been formed and organized under Philippine laws), making no distinction between the former and

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[20] See opening paragraph of this opinion.

[21] SEC 20, pars. (h) and (i).

[22] SEC. 1 (e).

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the latter in so far as the terms banking institutions" and bank" are used in the Act,[23] declaring on the contrary that in "all matters not specifically covered by special provisions applicable only to foreign banks, or their branches and agencies in the Philippines, said foreign banks or their branches and agencies lawfully doing business in the Philippines "shall be bound by all laws, rules, and regulations applicable to domestic banking corporations of the same class, except such laws, rules and regulations as provided for the creation, formation, organization, or dissolution of corporations or as fix the relation, liabilities, responsibilities, or duties of members, stockholders or officers of corporation."[24]

This Court itself has already had occasion to hold[25] that a foreign corporation licitly doing business in the Philippines, which is a defendant in a civil suit, may not be considered a *non-resident* within the scope of the legal provision authorizing attachment against a defendant *not residing in the Philippine Islands*";[26] in other words, a preliminary attachment may not be applied for and granted solely on the asserted fact that the defendant is a foreign corporation authorized to do business in the Philippines — and is consequently and necessarily, "a party who resides out of the Philippines." Parenthetically, if it may not be considered as a party not residing in the Philippines, or as a party who resides out of the country, then, logically, it must be considered a party who does reside in the Philippines, who is a resident of the country. Be this as it may, this Court pointed out that:

" * * * Our laws and jurisprudence indicate a purpose to assimilate foreign corporations, duly licensed to do business here, to the status

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[23] SEC. 2.

[24] SEC. 18.

[25] *Claude Neon Lights, Fed. Inc. v. Philippine Advertising Corporation*, 57 Phil. 607.

[26] SEC. 424, in relation to SEC. 412 of Act No. 190, the Code of Civil Procedure; SEC. 1 (f), Rule 59 of the Rules of 1940; SEC. 1 (f), Rule 57, Rules of 1964.

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of domestic corporations. (Cf. Section 73, Act No. 1459, and *Marshall Wells Co. vs. Henry W. Elser & Co*., 46 Phil. 70, 76; *Yu Cong Eng vs. Trinidad*, 47 Phil. 385, 411) We think it would be entirely out of line with this policy should we make a discrimination against a foreign corporation, like the petitioner, and subject its property to the harsh writ of seizure by attachment when it has complied not only with every requirement of law made specially of foreign corporations, but in addition with every requirement of law made of domestic corporations.* * *."

Obviously, the assimilation of foreign corporations authorized to do business in the Philippines "to the status of *domestic* corporations," subsumes their being found and operating as corporations, hence, *residing*, in the country.

The same principle is recognized in American law: that the "residence of a corporation, if it can be said to have a residence, is necessarily where it exercises corporate functions * * *"; that it is considered as dwelling "in the place where its business is done * * *," as being "located where its franchises are exercised * * *," and as being "present where it is engaged in the prosecution of the corporate enterprise"; that a "foreign corporation licensed to do business in a state is a resident of any country where it maintains an office or agent for transaction of its usual and customary business for venue purposes"; and that the "necessary element in its signification is locality of existence."[27] Courts have held that "a domestic corporation is regarded as having a residence within the state at any place where it is engaged in the particulars of the corporate enterprise, and not only at its chief place or home office";[28] that "a corporation may be domiciled in one state and resident in another; its legal domicile in the state of its creation presents no impediment to its residence in a real and practical sense in the state of its business activities."[29]

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[27] Words and Phrases, Permanent Ed., Vol. 37, pp. 394, 412, 403.

[28] 18 Am Jur 2d, p. 160.

[29] 23 Am Jur, p. 44, fn 20, citing *International Mill Co. v. Columbia Transp. Co.*, 292 U.S. 511, 78 L ed. 1396, 54 S. Ct. 797.

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The foregoing propositions are in accord with the dictionary concept of residence as applied to juridical persons, a term which appears to comprehend permanent as well as temporary residence.

The Court cannot thus accept the petitioners' theory that corporations may not have a residence (*i.e.*, the place where they operate and transact business) separate from their domicile (*i.e.*, the state of their formation or organization), and that they may be considered by other states as residents only for *limited and exclusive purposes*. Of course, as petitioners correctly aver, it is not really the grant of a license to a foreign corporation to do business in this country that makes it a resident; the license merely gives legitimacy to its doing business here. What effectively makes such a foreign corporation a resident corporation in the Philippines is its actually being in the Philippines and licitly doing business here, "locality of existence" being, to repeat, the "necessary element in . . (the) signification" of the term, resident corporation.

Neither can the Court accept the theory that the omission by the banks in their petition for involuntary insolvency of an explicit and categorical statement that they are "residents of the Philippine Islands," is fatal to their cause. In truth, in light of the concept of resident foreign corporations just expounded, when they alleged in that petition that they are foreign banking corporations, licensed to do business in the Philippines, and actually doing business in this country through branch offices or agencies, they were in effect stating that they are resident foreign corporations in the Philippines.

There is, of course, as petitioners argue, no substantive law explicitly granting *foreign banks* the power to petition for the adjudication of a Philippine corporation as a bankrupt. This is inconsequential, for neither is there any legal provision expressly giving *domestic banks* the same power, although their capacity to petition for insolvency can scarcely be disputed and is not in truth disputed by petitioners. The law plainly grants to a juridical person, whether it be a bank or not or it be a foreign or domestic corporation, as to natural persons as well, such a

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power to petition for the adjudication of bankruptcy of any person, natural or juridical, provided that it is a resident corporation and joins at least two other residents in presenting the petition to the Bankruptcy Court.

The petitioners next argue that "Philippine law is emphatic that only foreign corporations whose own laws give Philippine nationals reciprocal rights may do business in the Philippines." As basis for the argument they invoke Section 123 of the Corporation Code which, however, does not formulate the proposition in the same way. Section 123 does not say, as petitioners assert, that it is required that the laws under which foreign corporations are formed "give *Philippine nationals reciprocal rights*." What it does say is that the laws of the country or state under which a foreign corporation is "formed, organized or existing * * * allow *Filipino citizens and corporations to do business in its own country or state*," which is not quite the same thing. Now, it seems to the Court that there can be no serious debate about the fact that the laws of the countries under which the three (3) respondent banks were formed or organized (Hongkong and the United States) do "allow Filipino citizens and corporations to do business" in their own territory and jurisdiction. It also seems to the Court quite apparent that the Insolvency Law contains no requirement that the laws of the state under which a foreign corporation has been formed or organized should grant reciprocal rights to Philippine citizens to apply for involuntary insolvency of a resident or citizen thereof. The petitioners' point is thus not well taken and need not be belabored.

That the Monetary Board can not appoint a conservator or receiver for a foreign bank or order its liquidation having only the power to revoke its license, subject to such proceedings as the Solicitor General may thereafter deem proper to protect its creditors, which is another point that petitioners seek to make, is of no moment. It has no logical connection to the matter of whether or not the foreign bank may properly ask for a judicial declaration of the involuntary insolvency of a domestic corporation, which is the issue at hand. The fact is, in any

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event, that the law is not lacking in sanctions against foreign banks or powerless to protect the latter's creditors.

The petitioners contend, too, that the respondent banks have come to court with unclean hands, their filing of the petition for involuntary insolvency being an attempt to defeat validly acquired rights of domestic corporations. The Court wishes to simply point out that the effects of the institution of bankruptcy proceedings on all the creditors of the alleged bankrupt are clearly spelled out by the law, and will be observed by the Insolvency Court regardless of whatever motives — apart from the desire to share in the assets of the insolvent in satisfying its credits — that the party instituting the proceedings might have.

Still another argument put forth by the petitioners is that the three banks' failure to incorporate their branches in the Philippines into new banks in accordance with said Section 68 of the General Banking Act connotes an intention on their part to continue as residents of their respective states of incorporation and not to be regarded as residents of the Philippines. The argument is based on an incomplete and inaccurate quotation of the cited Section. What Section 68 required of a "foreign bank presently having branches and agencies in the Philippines, * * * within one year from the effectivity" of the General Banking Act, was to comply with *any of three (3) options, not merely with one sole requirement*. These three (3) options are the following:

1) (*that singled out and quoted by the petitioners, i.e.:*) "incorporate its branch or branches into a new bank in accordance with Philippine laws * * *; or

2) "assign capital permanently to the local branch with the concurrent maintenance of a `net due to' head office account which shall include all net amounts due to other branches outside the Philippines in an amount which when added to the assigned capital shall at all times be not less than the minimum amount of capital accounts required for domestic commercial banks under section twenty two of this Act"; or

3) "maintain a 'net due to' head office account which shall include all net amounts due to other branches outside the Philippines,

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in an amount which shall not be less than the minimum amount of capital accounts required for domestic commercial banks under section twenty-two of this Act."

The less said about this argument then, the better.

The petitioners allege that three days before respondent banks filed their petition for involuntary insolvency against CMI, they received from the latter substantial payments on account in the aggregate amount of ₱6,010,800.00, with the result that they were "preferred in the distribution of CMI's assets thereby defrauding other creditors of CMI." *Non sequitur*. It is in any case a circumstance that the Bankruptcy Court may well take into consideration in determining the manner and proportion by which the assets of the insolvent company shall be distributed among its creditors; but it should not be considered a ground for giving the petition for insolvency short shrift. Moreover, the payment adverted to does not appear to be all that large. The total liabilities of CMI to the three respondent banks as of December, 1981 was ₱21,531,336.91, and US$14,485,814.85. Converted into Philippine currency at the rate of ₱7.899 to the dollar, the average rate of exchange during December, 1981,[30] the dollar account would be ₱114,423,451.50. Thus, the aggregate liabilities of CMI to the banks, expressed in Philippine currency, was ₱135,954,788.41 as of December, 1981, and therefore the payment to them of ₱6,010,800.00 constituted only some 4.42% of the total indebtedness.

WHEREFORE, the petition is DENIED and the challenged Decision of the Court of Appeals is AFFIRMED *in toto*, with costs against the petitioners.

SO ORDERED.

Griño-Aquino and *Medialdea, JJ.*, concur.

Cruz, J., no part.

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[30] Pursuant to the Guiding Rates of the Central Bank of the Philippines.