

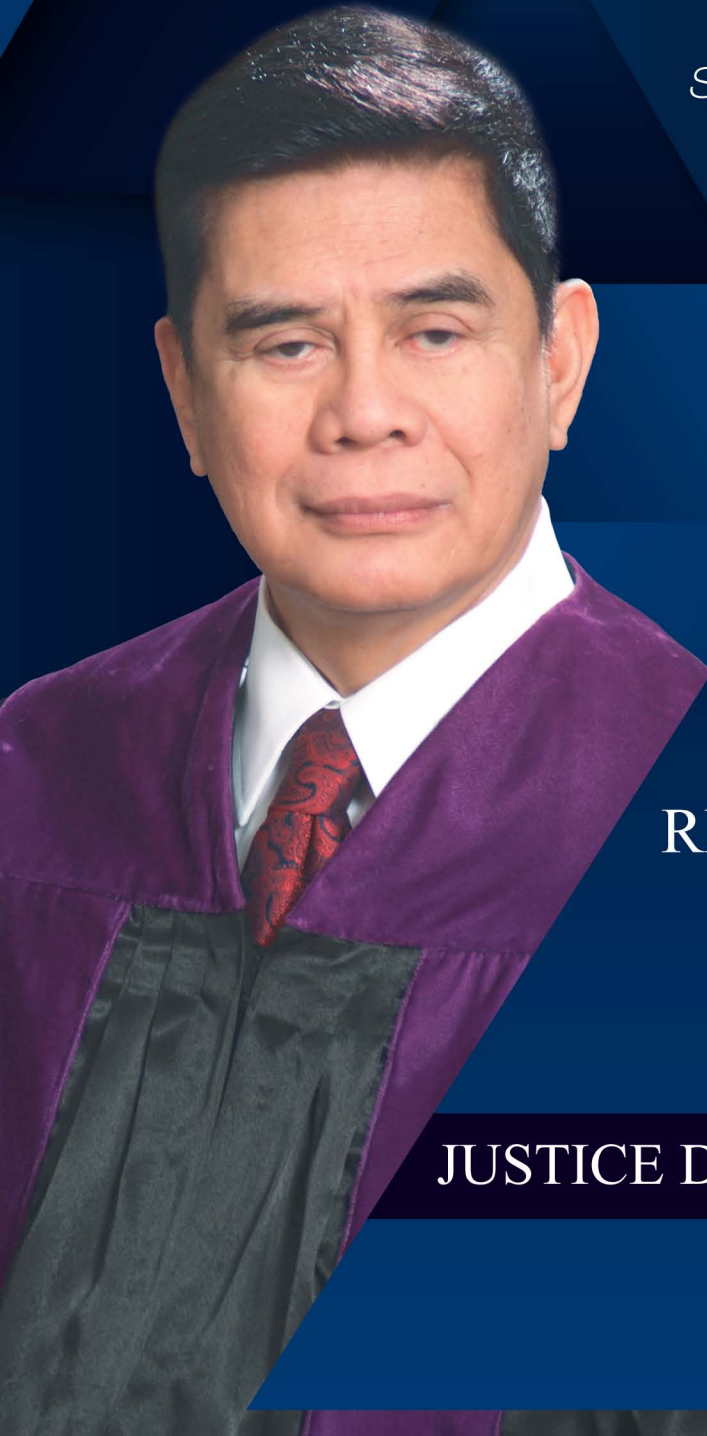


PHILJA



JANUARY-JUNE 2012 VOL. 14, ISSUE NO. 37

JUDICIAL JOURNAL



*Seventh Metrobank
Foundation
Professorial
Chair
Lecture*

CORPORATE REHABILITATION IN THE PHILIPPINES

JUSTICE DANTE O. TINGA

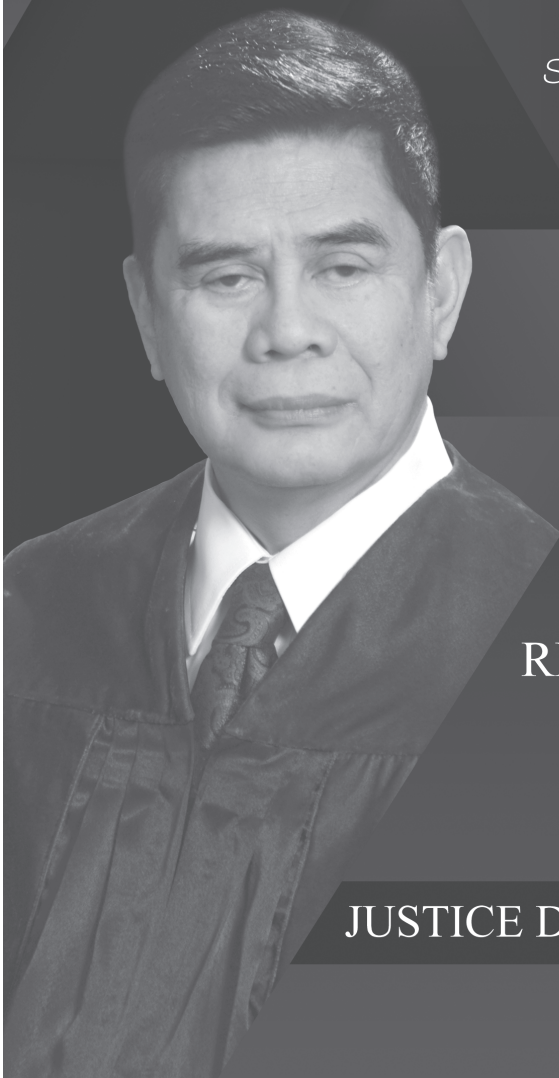


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The PHILJA Judicial Journal

The PHILJA Judicial Journal is published twice a year by the Research, Publications and Linkages Office of the Philippine Judicial Academy (PHILJA). The *Journal* features articles, lectures, research outputs and other materials of interest to members of the Judiciary, particularly judges, as well as law students and practitioners. The views expressed by the authors do not necessarily reflect the views of either the Academy or its editorial board.

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**Supreme Court of the Philippines
Philippine Judicial Academy**
*in cooperation with the
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present the

Seventh Metrobank Foundation Professorial Chair Lecture

*November 24, 2010, Wednesday, 2:00 p.m.
Court of Appeals Auditorium
Centennial Building, Court of Appeals
Maria Orosa Street, Manila*

Program

Doxology

**Philippine National Anthem
Supreme Court Hymn
SUPREME COURT CHOIR**

Opening Remarks

HONORABLE ARTURO D. BRION
Associate Justice, Supreme Court

Greetings

MR. ANICETO M. SOBREPENA
President, Metrobank Foundation, Inc.

Musical Number

SUPREME COURT CHOIR

Introduction of Lecturer

HONORABLE FRANCISCO P. ACOSTA
Associate Justice, Court of Appeals

LECTURE

CORPORATE REHABILITATION IN THE PHILIPPINES

JUSTICE DANTE O. TINGA

*Holder, 2010 Metrobank Foundation Professorial Chair in Commercial/Remedial Law
Retired Associate Justice, Supreme Court*

Panel of Reactors

HONORABLE JAPAR B. DIMAAMPAO
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Presentation of Paper

To the Metrobank Foundation, Inc.

BY THE CHAIRHOLDER

To Chief Justice Renato C. Corona

BY THE METROBANK FOUNDATION, INC.

Presentation of Endowment to the Chairholder

BY THE METROBANK FOUNDATION, INC.

**Presentation of Plaques of Appreciation
to the Metrobank Foundation, Inc. and to the Chairholder**

BY THE CHIEF JUSTICE ASSISTED BY THE PHILJA CHANCELLOR

Closing Remarks

HONORABLE RENATO C. CORONA
Chief Justice, Supreme Court

Philippine Judiciary Hymn

Master of Ceremonies

HONORABLE ROBERTO A. ABAD
Associate Justice, Supreme Court

OPENING REMARKS*

Hon. Arturo D. Brion
Associate Justice, Supreme Court

Honorable Chief Justice Renato C. Corona
My colleagues, past and present in the Supreme Court
Justices of the Appellate Courts
PHILJA Chancellor Adolfo S. Azcuna
Colleagues in the Judiciary
Mr. Aniceto M. Sobrepeña
The members of the Metrobank Foundation
Ladies and gentlemen,

Good afternoon to everyone. I have seen that we have a very good attendance and I welcome you all to the Seventh Metrobank Foundation Professorial Chair Lecture.

I recently finished reading Malcolm Gladwell's bestselling book *Outliers: The Story of Success* and found myself greatly agreeing with Gladwell's explanation on how excellence is achieved by seemingly ordinary individuals, of how successful people came to be what they are. Gladwell rebuked the popular notion that outliers still perform by themselves, achieving success by their own innate talent and hard work and that success is self-made. He declared that success is also the result of cultural legacies, hidden advantages, and extraordinary opportunities—and I stressed the element of opportunity.

For the Beatles, it was the opportunity to be invited early on in their career to play in Hamburg, Germany, eight hours a day, everyday. For Bill Gates, it was the opportunity to be exposed to computer engineering at a very young age of 13 when other children of the same age are still playing, simply because the Mother's Club of his school, not knowing what to do with the proceeds of their rummage sale, bought what was then a high tech computer. These opportunities, Gladwell stated, allowed the Beatles and Bill Gates "to learn, work hard, and make sense of the world in ways others cannot."

Today, through the Metrobank Foundation and PHILJA, we have an event that can be the start of an extraordinary opportunity. But let me first explain what this event is all about. Its sponsor, Metrobank Foundation, was established to propagate a culture of excellence among Filipino people envisioning an empowered Filipino society whose members are able to realize their full human potential. The Metrobank Foundation has dedicated itself to actively implement, assist and support programs that

* Delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila. *Transcribed.*

strengthened and advanced strategic sectors of society. For the legal and judicial sectors, it has accomplished this vision by partnering with the Philippine Judicial Academy and establishing a professorial chair that encourages the members of the legal profession to author and publish treatises and to lecture on innovative concepts and approaches in these related areas of law and jurisprudence. For these sectors, this is a unique opportunity that the Metrobank Foundation offers not only to gain familiarity but also to restart their own road to expertise in their chosen areas of law. For today the lecture by former Supreme Court Associate Justice Dante O. Tinga, a renowned expert, is on corporate rehabilitation, a developing area of law in the country.

This year is a milestone in the area of corporate rehabilitation. Congress recently enacted Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 (FRIA) which has substantially amended our laws governing corporate rehabilitation, suspension of payments, and insolvency. It is an exaggeration to say that we have with us a new area of law because insolvency has been with us for a century, while corporate rehabilitation is not a new concept either. But for the first time, these two concepts have been fused into one law. That shows how one concept passes into the other based on new insights and approaches, borne by recent experiences local and global. As everyone now knows, in the fast moving global economy that characterizes a world that has become a village because of information technology, financial crunches hitting even developed countries and their leading corporations are not unknown. If these giants are vulnerable, so are we, who are by far smaller, subject to the waves that global economic movements create. To cite the obvious, our locally produced goods and our export-oriented firms and businesses are among those most vulnerable to the effects of an economic slowdown.

For local businesses adversely affected by these difficult times, but who may have yet stayed off a shut down because of the potential for life that they carry, corporate rehabilitation offers the hope of a corporate renewal, in case of some—a second life. The rehabilitation of a corporation facing severe financial difficulties contemplates “the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation insolvency.” It is a process undertaken to bring life again to an ailing corporation, much like a CPR or cardiopulmonary resuscitation performed to return life and consciousness to a person in cardiac arrest. Such resuscitation through corporate rehabilitation benefits all the stakeholders—the corporation itself, its creditors and investors, the ordinary employees, ultimately and most importantly the economic stakeholders and consequent development of our country.

Corporate rehabilitation is therefore a very timely and significant topic, an area of law worth learning more about. As in any endeavor, we always strive to succeed but as Gladwell reminds us “no one ever makes it alone.” And we are fortunate that the Metrobank Foundation and PHILJA are opening opportunities for us, with daring and dedication on our part, to make our pursuit of excellence a reality. Let us seize this day

and the opportunity it offers. Let us all immerse ourselves in Justice Dante Tinga's lecture on corporate rehabilitation and actively participate in the discussions.

On this note, I reiterate my warmest welcome to all and my invitation to excellence to everyone. *Maraming salamat po.*

GREETINGS*

Mr. Aniceto M. Sobrepeña
President, Metrobank Foundation, Inc.

Chief Justice Renato C. Corona, PHILJA Chancellor Justice Adolfo S. Azcuna, our speaker Justice Dante O. Tinga, all the Associate Justices of the Supreme Court, officers and members of the Philippine Judicial Academy, our fellow Metrobankers, colleagues, friends, and distinguished guests; a pleasant afternoon to you all.

Metrobank Foundation envisions an empowered society whose members are able to realize their human potential. We believe this could be achieved by propagating a culture of excellence in strategic sectors of society. Thus, Metrobank Foundation is known for its recognition programs, these include our search for outstanding teachers, police and soldiers. We believe that by highlighting the good, we are contributing to our country's development. By having faith in people's innate goodness and integrity, we inspire them to become better public servants.

In 2005, when we partnered with PHILJA, our goal echoed their mandate of recognizing and pursuing excellence in the judiciary through continuing education.

We are happy that our efforts have borne fruit through the compilation of the Metrobank Foundation Professorial Lecture Series, which was launched last August 20, 2010.

We are also pleased to inform you that in recognition of the professorial chairholders' valuable contribution in promoting excellence in the Philippine judicial system, the Foundation increased the honorarium provided to the chairholder from P50,000 to P100,000, beginning this year.

Law touches all our lives; it provides structure and ensure stability in all facets of our life. Without law, we are a country in chaos. This professorial chair helps provide a better understanding of the law of the land, which will lead to better decision making, better implementation of the law, and, eventually, a better society.

We are looking forward to this afternoon's lecture on corporate rehabilitation. We believe it is timely given the recent financial crisis. Understanding the law on corporate rehabilitation is particularly essential to Metrobank because of two primary reasons: first, as a leading private sector company, it is important to be abreast with emerging trends in corporate law; and second, as a foundation, it is part of our corporate social responsibility to contribute in the understanding of and abiding to the law that is the

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Delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila.

cornerstone of good corporate governance, which is the anchor of corporate social responsibility.

We thank the Philippine Judicial Academy and this year's chairholder Justice Tinga for their dedication to pursue improvements and enhancements in the law to ensure its responsiveness to the current time.

We are particularly pleased when we were informed that Justice Tinga is the chairholder for this year because he became a partner of Metrobank Foundation in 2005 when he became a member of our Board of Judges in the Metrobank Foundation Search for The Outstanding Philippine Soldiers or TOPS. Thank you Justice Tinga for your continued support.

It is our hope that our professorial chairholders will continue to be inspired and will continue to promote a culture of integrity and excellence in our judiciary.

Thank you very much for your kind attention, good afternoon.

CORPORATE REHABILITATION IN THE PHILIPPINES*

Justice Dante O. Tinga

Justice Dante O. Tinga is the holder of the 2010 Metrobank Foundation Professorial Chair in Commercial/Remedial Law.

Justice Tinga is a jurist, legislator, lawyer, academic and public servant. He served as an Associate Justice of the Supreme Court from 2003 to 2009.

Chief Justice Reynato S. Puno described Justice Tinga as one of the best minds that ever sat in the Supreme Court, noting that in the High Court he “was able to still many of our thoughts in turmoil in about every field of law” and slay “some of the dinosaurs in our jurisprudence.”

During his stint of nearly six years in the High Court, he wrote 747 full-length decisions, or practically 124 decisions a year, apart from having the most number of separate opinions for the period. He did not leave a backlog, only several landmark *ponencias*.

From 1987 to 1998, Representative Tinga represented the Taguig-Pateros district in the House of Representatives for three consecutive terms, where he was chosen by media covering the House as outstanding congressman from year to year.

As Chair of the Committee on Corporations and Franchises during his first term, he liberalized the telecommunications industry with the grant of franchises to companies which are now the leading players in the industry. He also held meetings and made studies that ultimately led to the transfer of quasi-judicial functions of the Securities and Exchange Commission to the regular courts. As Chair of the Committee on Energy during his second term, he authored and sponsored the law that helped resolve the crippling power crisis that beset the country at the time. He also made studies and drafted the first power reform bill that served as the framework of the Electric Power Industry Reform Act (EPIRA).

From 1989 to 1993, he was the Dean of the University of the East College of Law, where he graduated with a law degree, *magna cum laude* and class valedictorian, in 1960. From 2001 until his appointment to the Supreme Court, he served



as the pioneer Dean of the College of Law of the Polytechnic University of the Philippines. Aside from teaching law, he maintained an extensive private law practice prior to his elevation to the Supreme Court.

Justice Tinga earned his Master of Laws degree on a scholarship grant from the University of California at Berkeley with High Honors in 1970, where he received special studies in *Corporation Law, Securities Regulation, and International Business Transactions and Transnational Problems*.

He is a recipient of several honors, which include the Most Distinguished Alumnus in Education in 1991, the Most Distinguished Alumnus in the Legal Profession in 1988, the Most Outstanding Alumnus in 2006, and the degree of Doctor of Laws (*Honoris Causa*) last April 2009, all conferred by the University of the East. He was also conferred the degree of Doctor of Public Administration by the Polytechnic University of the Philippines in 1996. After his retirement, he received two international awards, the 2009 Man of the Year in Law Award of the American Biographical Institute on February 14, 2010 and the UE Global Achiever Award from the UE Alumni Association, US Chapter, on June 5, 2010.

*

Lecture delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila.

INTRODUCTION

The lecture today is about corporate rehabilitation in the Philippine legal setting. In essence, corporate rehabilitation is a mechanism by which a private corporation put in jeopardy is able to obtain a grace period from its creditors as it undertakes a rehabilitation plan that seeks to lead it back to a path of solvency. As the temporary insulation of the subject corporation from civil suits of its creditors constitutes interference with the private rights of the creditors, state supervision over the rehabilitation process is called for. Thus, the need for a comprehensive law and a set of procedural rules.

Without belittling the signal honor conferred on me, I suspect that I have been asked to deliver this lecture because I was the Chair of the Subcommittee on Commercial Courts. That Subcommittee had drafted the *2008 Rules of Procedure on Corporate Rehabilitation (2008 Rules)* which took effect on January 16, 2010.¹ But giving credit to where credit is due, I would like to attest to the diverse experience and homogeneous expertise the Subcommittee members brought to the table. Their sterling qualities facilitated the identification of problem areas in the implementation of the *Interim Rules of Procedure on Corporate Rehabilitation of 2000 (Interim Rules)* and ensured the rationalization and modernization of the procedure by filling up the gaps, addressing the perceived needed reforms and adopting international practices. But woe to their efforts and mine too, our creation was relegated to the dustbin of history after only one year of existence. On February 2, 2010, Congress enacted Republic Act No. 10142, otherwise known as the “Financial Rehabilitation and Insolvency Act of 2010” (FRIA). Levity aside, we entertain neither lament nor self-commiseration. Judges lay down the procedure but legislators make the law.

In discussing corporate rehabilitation, this lecture utilizes the FRIA, as well as the *2008 Rules*, as focus points. I hope that at the end of the discourse, a deeper interest and clearer understanding will emerge of this hitherto unexciting and neglected field of law in this jurisdiction.

HISTORICAL BACKGROUND

The terms *bankruptcy* and *insolvency* in ordinary usage are synonymous but *bankruptcy* is more widely used. According to *Words & Phrases*, “insolvency is broader, and historically bankruptcy was included within its scope.”²

¹ The members who comprised the Subcommittee were CA Justices Japar B. Dimaampao and Sixto C. Marella, Jr. (deceased); Quezon City RTC Judge Reynaldo B. Daway; then Director-General of the Intellectual Property Office, now DTI Undersecretary Adrian S. Cristobal, Jr; Dean Cesar L. Villanueva of the Ateneo College of Law; and Atty. Francis Ed. Lim, then President of the Philippine Stock Exchange.

² 21 *Words & Phrases*, Sup. 200, 201.

Bankruptcy has two etymological roots. In Latin, *banca rotta*, whose Italian permutation is *banca rotto*, which both literally mean “broken board,” referred to the custom in Medieval Italy of angry creditors breaking up the work benches of defaulting merchants. The term was formed from the ancient Latin *bancus* (a bench or table), and *ruptus* (broken). A “bank” referred to a bench, which the first bankers had in public places on which they tolled their money, wrote their bills of exchange, etc. Hence, when a banker failed, he broke his bank.³

On the other hand, the French word *banqueroute* signified debtors running away “on the route or road” from creditors with their ill-gotten gains.⁴ In other words, *banqueroute* simply means “absconder.”

The Spanish word for “bankrupt” is *bancarota*. Yet the Spanish Code of Commerce of 1888 chose to use the words *insolvencia* and *insolvente* instead. There was no formal explanation for this recourse. It must have been because even then “bankruptcy” had a more unpalatable nuance as it denoted not only destitution but even degeneracy.

The concept and origin of bankruptcy law as it is now known in the modern world originated in England as far as back as 1542 during the reign of Henry VIII. From there, the concept was transported to the United States.⁵

Bankruptcy was originally planned as a remedy for creditors—not debtors. This was due to the fact that debtor default had been considered a crime from antiquity until well into the 19th century. By then, in England debtors were allowed to be released from prison and their debts discharged. However, for many years, bankruptcy continued to be a remedy favoring creditors, involuntary and largely penal in nature. It was generally used only against traders.⁶

In the United States, the subject of bankruptcy was given specific recognition upon the adoption of its Constitution in 1789.⁷ In 1841, the US Congress passed a law, considered a watershed event in bankruptcy history, as it allowed, for the first time, a financially troubled debtor to directly file bankruptcy and receive a discharge.⁸ This landmark legislation was adopted eight years later in England.⁹

³ David Skeel, *Debt's Dominion: A History of Bankruptcy in America*, Princeton University Press, ISBN 0-6911-1637-7, 2001; Edward Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America*, University of North Carolina Press, ISBN 0-8078-2600-6, 2001.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ The US Constitution provides that the Congress shall have the power to establish “uniform laws on the subject of Bankruptcies” throughout the United States. US CONST. I, Sec. 8 Cl. 4.

⁸ *Supra* note 3, citing Act of 1841, Sec. 1, 5 Stat. 440.

⁹ *Id.*, citing 12 and 13 Vict., c. 106, Sec. 93 (1849) (Eng.).

To overhaul the bankruptcy system, the US Congress passed the *Bankruptcy Reform Act of 1978*.¹⁰ This was followed by the *Bankruptcy and Federal Amendments Act of 1984*.¹¹ This amendatory law was the offshoot of the *Marathon* case¹² wherein the US Supreme Court through Justice Brennan held unconstitutional the broad grant of jurisdiction to bankruptcy judges because those judges were not appointed under and protected by Article III of the Constitution.

Ten years later, the *Bankruptcy Reform Act of 1994* was enacted. As recently as five years ago, the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* became law. This legislation is considered by many experts to be the most far-reaching overhaul of US bankruptcy law since 1978.

It is now evident that the principal focus of modern insolvency legislation and business debt restructuring practices no longer rests on the absolute elimination of insolvent entities but on the structural remodeling of financially distressed debtors so as to permit the rehabilitation and continuation of their business, in a manner that equitably allocates the burdens of insolvency among the stakeholders in a market economy consonant with the country's policies and programs.

The notion that a failing enterprise may seek protection from creditors while undergoing rehabilitation was transported by Spain to the Philippines. The Code of Commerce, which was implemented in the Philippines during the waning years of Spanish rule, had an entire book devoted to "Suspension of Payments, Bankruptcies and Prescriptions."¹³ Article 870 of the Code provided that a "merchant¹⁴ who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectfully fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration."

In 1909, the Philippine Commission enacted Act No. 1956, better known as the Insolvency Law. It provided for suspension of payments with a similar standard as that provided in the Spanish Code of Commerce. The relief was available to a person, whether natural or juridical, who "possessing sufficient property to cover all [his] debts x x x but foresees the impossibility of meeting them when they respectively fall due."¹⁵ The law also provided for both voluntary and involuntary insolvency.¹⁶

¹⁰ 28 U.S.C. Sec. 147(b) (1976 ed. Supp.).

¹¹ See generally 11 U.S.C. Sec. 541.

¹² *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

¹³ Book Four, Code of Commerce (1888).

¹⁴ This included associations and enterprises, excepting railroad companies and others devoted to public service works. See Article 873 and Article 930, Code of Commerce (1888).

¹⁵ *Id.*

¹⁶ See Secs. 14 to 28, Act No. 1956 (An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors and the Punishment of Fraudulent Debtors) (1909), as amended.

After the enactment of the Insolvency Law, there was a long lull. It would take 71 years before the emergence of new laws allowing not only suspension of payments but also corporate rehabilitation as reliefs. Within that long span of time the economy of the country underwent great changes. We began to interact more with the global economy, despite the hemming and hawing between protectionist impulses and more liberal market-oriented policies. The inflow of foreign money increased and access to credit became easier, leading to more high-risk investments, and more spectacular failures. There likewise emerged greater state regulation of the financial markets.

Presidential Decree No. 1758, by way of amendment to PD No. 902-A, which basically is the charter of the reorganized Securities and Exchange Commission (SEC) and the source of its quasi-judicial functions, vested the SEC with jurisdiction over petitions of corporations for suspension of payments “in cases where the corporation possesses property to cover all of its debts but foresees the impossibility of meeting them when they respectively fall due.” This is exactly the situation covered by both the Spanish Code of Commerce and the Insolvency Law. However, PD No. 1758 further introduced a new instance whereby a corporation could apply for suspension of payments, that is when it “has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or management committee created pursuant to this Decree.”

Presidential Decree Nos. 1758 and 1799, both enacted in January 1981, augmented the jurisdiction of the SEC in another critical way. They conferred on the SEC the power to appoint rehabilitation receivers and/or management committees “in appropriate cases where there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties x x x of corporations which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.”¹⁷ These amendments found in Sections 6(c) and (d) of PD No. 902-A, as amended, introduced the element of State involvement, through the SEC, in the rehabilitation of private corporations, apart from two types of insolvency proceedings covering corporations and partnerships only.¹⁸ Section 6(c) of the Decree mandated that all actions for claims against corporations under management or receivership be suspended, a less textually direct but equally potent way to enforce suspension of payments.

It can be said that Sections 5(d), 6(c) and 6(d) of PD No. 902-A, as amended, had stood as the statutory authority for corporate rehabilitation in the Philippines before the enactment of the FRIA.

¹⁷ Secs. 6(c) and (d) of PD No. 902-A (Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President) (1976), as amended by PDs No. 1758 and 1799.

¹⁸ (1) Where the petitioner has sufficient property to cover all its debts but foresees the impossibility of meeting them as they fall due and has been placed under a management committee; (2) where the petitioner has no sufficient assets to cover liabilities, but is under the management of a rehabilitation receiver or management committee.

In 2000, RA No. 8799, otherwise known as the Securities Regulation Code, was signed into law. Following Subsection 5.2 of the law, the jurisdiction of the SEC over cases enumerated under Section 5 of PD No. 902-A, as amended, including Section 5(d) petitions for suspension of payments, was transferred to the Regional Trial Courts constituted as Special Commercial Courts. This transfer of jurisdiction rendered it necessary for the Supreme Court to adopt specific rules of procedure in the Special Commercial Courts in 2000. Hence, the *Interim Rules* based primarily on the *SEC Rules of Procedure on Corporate Recovery* was adopted. Then in late 2008, the Supreme Court promulgated the *2008 Rules*.

The *2008 Rules* provided a comprehensive overhaul of the structure of corporate rehabilitation, introducing new concepts such as pre-negotiated rehabilitation and recognition of foreign proceedings. However, the FRIA, which lapsed into law and took effect on July 18, 2010, now stands as the exclusive statutory authority for the rehabilitation or liquidation of financially distressed enterprises and individuals.¹⁹ The FRIA retained many of the innovations in the *2008 Rules* yet it also reshaped the nature of corporate rehabilitation to the extent of leaving the *2008 Rules* archaic in many ways despite its recentness. The innovations and reforms incorporated in the FRIA are the welcome offshoot of the wholesale revision of the rules on corporate rehabilitation, insolvency and liquidation proceedings in the Philippines and their integration into one comprehensive law. The changes are also conceivably designed to speed up and rationalize rehabilitation proceedings and, at the same time, discourage and minimize frivolous petitions for rehabilitation.

The Supreme Court's Subcommittee on Commercial Courts currently headed by Justice Arturo D. Brion is now in the midst of revising the rules of procedure based on the FRIA.²⁰

BASIC CONCEPTS IN CORPORATE REHABILITATION

When debtor is rehabilitable

The FRIA defines rehabilitation as “the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if

¹⁹ Concerning the SEC, the FRIA provided in Section 93 that the provisions of Chapter V (Liquidation of Insolvent Juridical Debtors) shall not affect the regulatory powers of the SEC under Section 6 of PD No. 902-A, as amended, with respect to any dissolution and liquidation proceeding initiated and heard before it. Republic Act No. 10142, An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals [Financial Rehabilitation and Insolvency Act (FRIA)]. (2010).

²⁰ **Sec. 6. Designation of Courts and Promulgation of Procedural Rules.** – The Supreme Court shall designate the court or courts that will hear and resolve cases brought under this Act and shall promulgate the rules of pleading, practice and procedure to govern the proceedings brought under this Act, FRIA.

it is immediately liquidated.”²¹ This definition is virtually the same as that adopted in the *2008 Rules*,²² a definition which was derived in part from Philippine jurisprudence.²³ In contrast, the *Interim Rules* did not contain a definition of “rehabilitation.”

I would like to direct attention to the elucidation of the Supreme Court in *Metropolitan Bank & Trust Co. v. ASB Holdings*,²⁴ which provides additional perspective of the philosophy underlying rehabilitation.

x x x to enable the company to gain new lease on life and thereby [allow] creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This is in consonance with the State’s objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the public.²⁵

This explanation is also ideal as it not only takes into account the benefits extended to the corporation undergoing rehabilitation, but also the wider public purpose why State intervention becomes necessary, especially in the matter of enjoining what would be valid demandable claims among private parties. In *Metropolitan Bank*, we see a conscious linkage between state-supervised rehabilitation proceedings and the police power of the State.²⁶ The survival of the corporation through rehabilitation proceedings redounds to the welfare of the general public.

With the enactment of the FRIA, liquidation and insolvency proceedings for insolvent juridical debtors are now governed particularly by Chapters V²⁷ and VII²⁸ thereof. Moreover, it is clear under the FRIA²⁹ that the court may convert pending court-supervised or pre-negotiated rehabilitation proceedings into liquidation proceedings upon a finding that the debtor is insolvent and there is no substantial likelihood for the debtor to be successfully rehabilitated;³⁰ when the termination of

²¹ Sec. 4(gg), FRIA.

²² Sec. 1, 2008 RULES OF PROCEDURE ON CORPORATE REHABILITATION [2008 RULES].

²³ See Minutes of Subcommittee Meeting, August 24, 2007.

²⁴ 517 SCRA 1 (2007).

²⁵ *Id.*, at 15. See also, *Philippine National Bank v. Court of Appeals*, 576 SCRA 537 (2009).

²⁶ In a similar vein, the Court also stated in *Rubberworld v. NLRC*, 305 SCRA 721 (1999), “the rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.”

²⁷ Secs. 90–93, FRIA.

²⁸ Secs. 111–135, FRIA.

²⁹ Sec. 92, FRIA. The liquidation order is also issued when the petition or motion for voluntary liquidation is sufficient in form and substance. See Sec. 90, FRIA.

³⁰ Sec. 25(c), FRIA.

proceedings is due to failure of rehabilitation or dismissal of the petition on non-technical or substantive grounds,³¹ or when no rehabilitation plan is confirmed by the court within one year from the filing of the petition.³²

How does the court assess whether the petitioner corporation is rehabilitable? The FRIA definition of “rehabilitation” offers three standards or tests: (1) that the corporation can be restored to a “condition of successful operation and solvency;” (2) that “it can be shown that its continuance of operation is economically feasible;” and (3) that “its creditors will still be able to recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.”³³ Clearly, educated theorization is required in assessing whether a corporation is rehabilitable since the benchmark of success lies in future and uncertain conditions. But then the FRIA requires documented basis for the court to make a well-grounded affirmation of the petition. A petition for rehabilitation must contain a rehabilitation plan, and one of the functions of that rehabilitation plan is to convince the court that it provides a viable path to successful operation and solvency, as well as the payment of creditors. And of course, the best sense of the judge, attuned as he should with the current economic playing field, would be required. For example, the petitioner seeking rehabilitation is engaged in the cellphone industry and its market share in the industry is rock-bottom. Once the judge becomes aware that the corporation’s travails are due to its extreme difficulty in getting a slice of the share of any of the market leaders, he or she would have no second thoughts about the futility of rehabilitating the corporation.

Debtors allowed to seek rehabilitation

The FRIA specifically identifies three types of debtors covered by it. They are: (a) a sole proprietorship duly registered with the Department of Trade and Industry (DTI), (b) a partnership duly registered with the SEC; and (c) a corporation duly organized and existing under Philippine laws.³⁴ Notably, an individual whose business is not registered with the DTI cannot seek relief under the FRIA. The law also explicitly excludes banks, insurance companies, pre-need companies, national and local government agencies or units.³⁵ However, government financial institutions other than banks and government-owned or controlled corporations are covered, unless their specific charters provide otherwise.³⁶

³¹ Sec. 75, FRIA.

³² Sec. 72, FRIA.

³³ Sec. 4(gg). The standards may be amplified by the Supreme Court in the Rules which it will promulgate. This is recognized in Section 25(c)(2), FRIA.

³⁴ Sec. 4(k), FRIA.

³⁵ Sec. 5, FRIA.

³⁶ *Id.*

In contrast, the *2008 Rules*, governing as it did corporate rehabilitation, had specific application to petitions for rehabilitation of corporations, partnerships and group of companies, supervised or regulated by the SEC or other government agencies, associations, consistent with PD No. 902-A, as amended.³⁷

Prior to the *2008 Rules*, the petition for rehabilitation by a group of companies was not specifically recognized, though it was the practice of some commercial court judges to allow consolidated petitions of distressed corporations and their affiliates and subsidiaries, as long as the group of companies or the conglomerate belonged to one controlling stockholder.³⁸

As one of its innovations, the *2008 Rules* allowed a group of companies to file a petition for rehabilitation.³⁹ Drawing on the innovation, the FRIA allows the filing of a petition by corporations that are financially related to one another as parent corporations, subsidiaries and affiliates, to be known as “group of debtors.”⁴⁰

Expanding the concept in the *2008 Rules*, the FRIA includes in “group of debtors” partnerships that are owned more than 50 percent by the same person, and single proprietorships that are owned by the same person.⁴¹ A group of debtors may file a petition for rehabilitation “when one or more of its members foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other members of the group and/or the participation of the other members of the group is essential under the terms and conditions of the proposed Rehabilitation Plan.”⁴²

Types of rehabilitation

Under the FRIA, there are two broad categories of rehabilitation proceedings: Judicial Rehabilitation and Extrajudicial Rehabilitation which the FRIA denominates “Out-of-Court or Informal Restructuring Agreement and Rehabilitation Plan.” Judicial Rehabilitation in turn is either Court-Supervised⁴³ or Pre-Negotiated.⁴⁴ The court-

³⁷ The SEC has jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government. See Section 5, RA No. 8799, THE SECURITIES REGULATION CODE (2000).

³⁸ Minutes of Subcommittee Meeting, August 24, 2007.

³⁹ Sec. 1 (2nd par.), Rule 4, 2008 RULES.

⁴⁰ Sec. 4(n), FRIA.

⁴¹ *Id.*

⁴² Sec. 12, FRIA.

⁴³ See Secs. 12–75, FRIA.

⁴⁴ See Secs. 76–82, FRIA.

supervised rehabilitation is further classified into voluntary proceedings,⁴⁵ so called because it is initiated by the debtor, and involuntary proceedings,⁴⁶ which is initiated by the creditor.

The extrajudicial rehabilitation is an innovation introduced by the FRIA.⁴⁷ For the agreement to qualify under the governing Chapter IV of the FRIA, it must have been agreed to or approved by all the stockholders representing the prescribed minimum interests, namely: the debtor, creditors representing at least 67 percent of the secured obligations, the creditors representing at least 75 percent of the unsecured obligations, and the creditors holding at least 85 percent of the total liabilities, secured and unsecured, of the debtor.⁴⁸

Pending negotiation and finalization of the extrajudicial rehabilitation, a “standstill period” may be agreed upon by the parties “which shall be effective and enforceable not only against the contracting parties but also against the other creditors” subject to certain conditions.⁴⁹

The “standstill period” agreement is basically an agreement to maintain the *status quo* for no more than 120 days. What is unique here is that the agreement is also binding on the creditors who did not agree to it.⁵⁰

A duly approved extrajudicial rehabilitation has the same legal effect, or cram-down effect, as confirmation of a Rehabilitation Plan under Section 69 of the FRIA.⁵¹

Both the debtor-initiated and creditor-initiated rehabilitation proceedings were incorporated in the *2000 Interim Rules*, as well as in the *2008 Rules*. The pre-negotiated rehabilitation was introduced for the first time in the *2008 Rules*.

⁴⁵ See Sec. 12, FRIA.

⁴⁶ See Secs. 13–14, FRIA.

⁴⁷ See Chapter IV, Secs. 83–89, FRIA. Extrajudicial rehabilitation could not have been introduced by either the *Interim Rules* or the *2008 Rules* simply because there was no substantial law basis therefor. PD No. 902-A, as amended, is silent on the modality.

⁴⁸ Sec. 84, FRIA.

⁴⁹ Sec. 85, FRIA:

x x x. *Provided*, That such agreement is approved by creditors representing more than 50 percent of the total liabilities of the debtor; (b) notice thereof is published in a newspaper of general circulation in the Philippines once a week for two consecutive weeks; and (c) the standstill period does not exceed 120 days from the date of effectivity. The notice must invite creditors to participate in the negotiation for out-of-court rehabilitation or restructuring agreement and notify them that said agreement will be binding on all creditors if the required majority votes prescribed in Section 84 of this Act are met.

⁵⁰ This new feature is a derivative of a modern practice recognized in US bankruptcy law.

⁵¹ Sec. 86, FRIA.

Pre-negotiated rehabilitation occurs when the insolvent debtor, prior to the filing of the petition, is able to come to agreement on a plan for rehabilitation with creditors holding at least two-thirds of the debtor's total liabilities, including secured creditors holding more than 50 percent of the total secured claims, and unsecured creditors holding more than 50 percent of the total unsecured claims.⁵² The petition for pre-negotiated rehabilitation may be filed by the debtor singly or jointly with any of the creditors.⁵³ The proceedings is summary in nature.⁵⁴

Commencement of Judicial Rehabilitation

The court-supervised rehabilitation is initiated by a petition filed with the special commercial court. If the move is voluntary, it requires the approval or authorization, in case of a corporation, by a majority vote of the board of directors or trustees, and the vote of the stockholders representing at least two-thirds of the outstanding capital stock in the case of a stock corporation, or two-thirds of the members in the case of a non-stock corporation, in a meeting called for the purpose.⁵⁵

Involuntary proceedings, on the other hand, is initiated through a petition of any creditor or group of creditors with a claim or aggregate claim of at least P1 million or at least 25 percent of the subscribed capital, whichever is higher, against the debtor, where (a) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least 60 days or that the debtor has failed generally to meet the liabilities as they fall due; or (b) a creditor, other than the petitioner/s, has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.⁵⁶

The proceedings, however, officially starts upon the issuance of the Commencement Order.⁵⁷ This order sets the date of the initial hearing on the petition, which should not be more than 40 days from the filing of the petition.⁵⁸ The general

⁵² Sec. 76, FRIA.

⁵³ *Id.*

⁵⁴ The stay order has to be issued and the rehabilitation receiver appointed within five working days from the filing of the petition (Sec. 77, FRIA). The plan should be approved within 10 days from the second publication of the initial order which is to be issued within five days from the filing of the petition (Secs. 78 and 77, FRIA). Objections have to be heard no earlier than 20 days and no later than 30 days from the second publication of the initial order (Sec. 80, FRIA). The Court has only 120 days from the filing of the petition to approve the Rehabilitation Plan. If there is no action, it shall be deemed approved (Sec. 81, FRIA).

⁵⁵ Sec. 12, FRIA.

⁵⁶ Sec. 13, FRIA.

⁵⁷ Sec. 16, FRIA.

⁵⁸ Sec. 16(m), FRIA.

purpose of such initial hearing is to determine whether there is a substantial likelihood for the debtor to be rehabilitated.⁵⁹

At least five days before the initial hearing, all creditors are expected to have filed their claims with the court, as directed in the Commencement Order.⁶⁰ Creditors who fail to file their claims on time are barred from participating in the rehabilitation proceedings, but are entitled to receive distributions arising therefrom.⁶¹

The Commencement Order also states its legal effects,⁶² appoints a rehabilitation receiver,⁶³ prohibits the debtor's suppliers from withholding the supply of goods or services in the ordinary course of business for as long as the debtor makes payment therefor after the issuance of the Commencement Order; and incorporates a Stay or Suspension Order, among other things.⁶⁴

⁵⁹ *Id.*

⁶⁰ Sec. 16(i), FRIA.

⁶¹ Sec. 23, FRIA.

⁶² Other legal effects are provided in Section 17, FRIA:

- (a) vest the rehabilitation receiver with all the powers and functions provided for in this Act, such as the right to review and obtain all records to which the debtor's management and directors have access, including bank accounts of whatever nature of the debtor, subject to the approval by the court of the performance bond filed by the rehabilitation receiver;
- (b) prohibit, or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed in this Act, subject to the provisions of Section 50 hereof;
- (c) serve as the legal basis for rendering null and void any setoff after the commencement date of any debt owed to the debtor by any of the debtor's creditors;
- (d) serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date; and
- (e) consolidate the resolution of all legal proceedings by and against the debtor to the court: *Provided, however,* That the court may allow the continuation of cases in other courts where the debtor had initiated the suit.

Attempts to seek legal or other recourse against the debtor outside these proceedings shall be sufficient to support a finding of indirect contempt of court.

⁶³ See also Secs. 28–35, FRIA.

⁶⁴ Sec. 16, FRIA.

Proceedings *in rem*

All proceedings under the FRIA are *in rem*,⁶⁵ as it was under the *2008 Rules*.⁶⁶ Under the *2008 Rules*, jurisdiction upon all persons affected by the proceedings was acquired with the publication of the stay order in any newspaper of general circulation in the Philippines. One change introduced by the FRIA is that what the judge issues within five working days from the filing of the petition is the Commencement Order which contains, among others, the Stay Order. It is the Commencement Order which is now required to be published in any newspaper of general circulation, and such publication invests the *in rem* jurisdiction of the rehabilitation court. While such publication in theory would serve as notice to the world, including all creditors affected by the proceedings, the FRIA also requires service by personal delivery to each creditor holding at least 10 percent of the total liabilities of the debtor within five days.⁶⁷

The Stay Order

A key feature of corporate rehabilitation is the issuance of a Stay or Suspension Order,⁶⁸ which has the effect of suspending all actions or proceedings for the enforcement of claims against the debtor and all actions to enforce any judgment, attachment or other provisional remedies against the debtor.⁶⁹ This Stay Order may be issued within five working days from the filing of the petition for rehabilitation, upon a finding by the court that the petition is sufficient in form and substance.⁷⁰ It generally remains effective for the duration of the rehabilitation proceedings, for as long as there is a substantial likelihood that the debtor will be successfully rehabilitated.⁷¹

The FRIA enumerates seven exemptions to the Stay Order. Significantly, among the cases are (a) cases already pending appeal in the Supreme Court as of commencement date;⁷² (b) cases filed at a specialized court or quasi-judicial agency upon a determination by the body that it is capable of resolving the claim more quickly, fairly and efficiently

⁶⁵ Sec. 3, FRIA.

⁶⁶ Sec. 1, Rule 3, 2008 RULES.

⁶⁷ Sec. 16(g), FRIA.

⁶⁸ In American law, this is also called the "Automatic Stay." See U.S.C., Sec. 362.

⁶⁹ See Sec. 16(q), FRIA. The Stay Order also prohibits the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business, and making any payment of its liabilities outstanding as of the commencement date except as may be provided in the FRIA.

⁷⁰ Sec. 15, FRIA.

⁷¹ Sec. 21, FRIA.

⁷² See Sec. 18(a), FRIA, which lays down the proviso that any final and executory judgment arising from such appeal shall be referred to the court for appropriate action.

than the rehabilitation court;⁷³ and (c) the enforcement of claims against sureties and other persons solidarily liable with the debtor and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the rehabilitation court upon recommendation by the rehabilitation receiver.⁷⁴ It bears noting, with respect to that last-mentioned exception, that under the *2008 Rules*, the Stay Order did not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation, unless the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, in which case said owner is entitled to the benefit of excussion.⁷⁵

The Rehabilitation Plan

There are several documents that need to be attached to all petitions for rehabilitation that require judicial intervention. One of the most important is the Rehabilitation Plan. The FRIA defines the Rehabilitation Plan as “a plan by which the financial well-being and viability of an insolvent debtor can be restored using various means including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of new business entity x x x or other similar arrangements as may be approved by the court or creditors.”⁷⁶

Evidently, the Rehabilitation Plan is the proposed blueprint for the recovery of the distressed corporation. This Rehabilitation Plan is distinctive.

First, the approval and supervision of the Rehabilitation Plan requires State action, as exercised through the commercial courts. Judicial *imprimatur* is indispensable to its implementation. Indeed, the object of the first stage of the rehabilitation proceedings is to ascertain whether the Rehabilitation Plan warrants court approval. Even after the

⁷³ See Sec. 18(b), FRIA, which lays down the proviso that any final and executory judgment arising from such appeal shall be referred to the court for appropriate action.

⁷⁴ Sec. 18(a), (b) and (c), FRIA. Also included in the exemptions are claims involving stock market transactions, claims involving the clearing and settlement of financial transactions facilitated through a clearing agency or similar entities duly authorized by the appropriate regulatory agency, and criminal actions (Secs. 18(d), (e), (f) and (g), FRIA).

⁷⁵ This amendment under the *2008 Rules* was significantly modified from an earlier proposal from the *Bankers Association of the Philippines* to unconditionally exclude from the stay order, foreclosure efforts by a bank or mortgagee owned by one other than the corporate debtor under rehabilitation.

⁷⁶ Sec. 4(ii), FRIA. The specific required contents of the Rehabilitation Plan are enumerated under Sec. 62.

court approves the Rehabilitation Plan, the proceedings remain in place until the approved Rehabilitation Plan is successfully implemented, or until rehabilitation fails.⁷⁷

Second. The Rehabilitation Plan, once approved by the court has binding effect upon the debtor and all persons who may be affected by it, including all the creditors, irrespective of whether or not they agree to the rehabilitation or they participated in the rehabilitation proceedings. This cram-down effect is made explicit in Section 69(a)⁷⁸ of the FRIA. Even if the Rehabilitation Plan is detrimental to the rights of creditors, it is assumed that the court has properly assessed that the creditors ultimately “can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.”⁷⁹ The cram-down feature is recognized in many jurisdictions as ultimately essential to the successful implementation of the rehabilitation plan.

The approved Rehabilitation Plan need not be the plan originally designed by the petitioner, which is attached to the petition. In fact, such Rehabilitation Plan generally requires the approval of each class of creditors holding more than 50 percent of the total claims for their respective class, although the court may confirm a Rehabilitation Plan rejected by the creditors if all the circumstances enumerated under Section 64 of the FRIA are present.

The court has a maximum period of one year from filing of the petition to confirm a Rehabilitation Plan. If no Rehabilitation Plan is confirmed within the period, the proceedings may, upon motion or *motu proprio*, be converted into a liquidation proceedings.⁸⁰

The FRIA explicitly authorizes the rehabilitation court to approve or confirm the Rehabilitation Plan and to implement the same despite the lack of approval, or objection from the owners, partners or stockholders of the insolvent debtor, as long as the terms thereof are necessary to restore the financial well-being and viability of the insolvent debtor.⁸¹

⁷⁷ See Sec. 74, FRIA.

⁷⁸ Sec. 69(a), FRIA: The Rehabilitation Plan and its provisions shall be binding upon the debtor and persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the Rehabilitation Plan or whether or not their claims have been scheduled.

⁷⁹ See Sec. 4(gg), FRIA.

⁸⁰ Sec. 72, FRIA.

⁸¹ Sec. 68, FRIA.

Rehabilitation Receiver and Management Committee

It is the rehabilitation receiver which has the task of consulting with the debtor and all the classes of creditors in the evaluation or review of the proposed Rehabilitation Plan, or the preparation of a new plan.⁸² Under the FRIA, a rehabilitation receiver may either be a natural or juridical person⁸³ and is initially appointed by the court, which may select the receiver from a list of nominees named in the petition for rehabilitation.⁸⁴ The role of the rehabilitation receiver generally lasts until the final approval of the Rehabilitation Plan, unless the Plan itself specifies a role for the receiver.⁸⁵ The principal duty of the rehabilitation receiver is to preserve and maximize the assets of the debtor during rehabilitation proceedings; to determine the viability of the rehabilitation of the debtor; to prepare and recommend a Rehabilitation Plan to the court and once the same is approved, to implement such plan.⁸⁶ Towards these ends, the rehabilitation receiver is vested with several powers, enumerated under Section 31 of the FRIA. However, the rehabilitation receiver is not allowed to take over the management and control over the debtor,⁸⁷ a prohibition that was contained as well in the *2008 Rules*,⁸⁸ unless the court itself appoints him to assume the management of the debtor.⁸⁹ However, the rehabilitation receiver is empowered to recommend to the court the appointment of a management committee which would take over the management and control of the debtor.⁹⁰

The power to turn over control of the debtor under rehabilitation to a management committee is an innovation introduced in the FRIA. The court may appoint a management committee upon clear and convincing evidence of actual or imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or other properties, the paralyzation of the debtor's business operations, and the debtor's gross mismanagement, or fraud or other wrongful conduct on the part of the existing management of the debtor.⁹¹

⁸² Sec. 63, FRIA.

⁸³ Sec. 4(ii), FRIA.

⁸⁴ Sec. 30, FRIA.

⁸⁵ Sec. 73, FRIA.

⁸⁶ Sec. 31, FRIA.

⁸⁷ *Id.*

⁸⁸ *See* Sec. 12, Rule 3, 2008 RULES.

⁸⁹ Sec. 36, FRIA.

⁹⁰ Sec. 31, FRIA.

⁹¹ *See* Sec. 36, FRIA.

Whether or not the debtor corporation is placed under a management committee, it is required to maintain its viability for rehabilitation until the Rehabilitation Plan is fully implemented. There are restrictions in the FRIA for the use and disposition of corporate assets,⁹² aimed at preserving enough assets of the corporation for the benefit of its creditors. The creditors themselves are entitled to act collectively by forming a creditors' committee,⁹³ which if constituted, will assist the rehabilitation receiver in communicating with the creditors and act as the primary liaison between the rehabilitation receiver and the creditors.⁹⁴

Termination of proceedings

The FRIA identifies six instances when there is a failure of rehabilitation. These are, (a) when the petition is dismissed by the court; (b) when the debtor fails to submit a Rehabilitation Plan; (c) when even under the submitted Rehabilitation Plan there is no substantial likelihood that the debtor can be rehabilitated; (d) when the debtor fails to perform its obligations or realize the goals set forth in the approved Rehabilitation Plan; and (e) when fraud is committed in securing the approval of the Rehabilitation Plan or its amendments.⁹⁵ As earlier noted, the failure of rehabilitation leads to the liquidation of the debtor and the rehabilitation proceedings is immediately converted into liquidation proceedings as a result.

At the same time, the rehabilitation proceedings may be terminated because the debtor has been successfully rehabilitated. Whatever the cause for termination, the inevitable results are the discharge of the rehabilitation receiver, and the lifting of the Stay Order or other court orders holding in abeyance any action for the enforcement of a claim against the debtor.⁹⁶

Other features

Apart from the features earlier taken up, the FRIA contains provisions aimed at making business rehabilitation effective and expeditious. Short timelines are prescribed at almost all stages of the proceedings.⁹⁷ Some provisions offer incentives to distressed

⁹² See Secs. 48–61, FRIA.

⁹³ Sec. 42, FRIA.

⁹⁴ Sec. 43, FRIA.

⁹⁵ Sec. 69, FRIA. The section also mentions “(O)ther analogous circumstances as may be defined by the rules of procedure.”

⁹⁶ Sec. 75, FRIA.

⁹⁷ See, e.g., Sec. 15 (Issuance of Commencement Order); Sec. 16 (Date of initial hearing); Sec. 24 (Report of rehabilitation receiver); Sec. 25 (Giving due course or dismissing petition or converting it to liquidation proceedings); and Sec. 72 (Confirmation of Rehabilitation Plan), FRIA.

companies.⁹⁸ The law also seeks to help establish a pool of professional managers and experts by requiring rigid but suitable qualifications and grounds for removal.⁹⁹ To protect creditors and the public, it addresses the problem of bankruptcy fraud.¹⁰⁰ The FRIA has established cross-border insolvency in this jurisdiction by expressly adopting as part thereof the Model Law on Cross-Border Insolvency of the United Nations Center for International Trade and Development (UNCITRAL).¹⁰¹

CONCLUSION

This has been but a quite basic overview of the current state of rehabilitation proceedings in the Philippines. The law is often a more conservative force than the socio-economic forces that revolve around it, and the challenge of the judiciary always is to be responsive and adaptive to these changes, lest it be left behind with the times. The *2008 Rules*, itself a product of these changes, was not designed to be static, and is therefore susceptible to refashioning whether by amendment or judicial precedent. The FRIA itself has met the challenge of updating the state of the law to reflect the current financial trends. It will now be up to the Court again to adjust accordingly and adopt a new set of procedural rules to fully implement the many changes introduced by the FRIA. As always, the Court will be more than equal to the task.

⁹⁸ See, e.g., Sec. 19 (Waiver of taxes and fees due National Government and LGUs); and Sec. 20 (Application of stay or suspension order to government financial institutions), FRIA .

⁹⁹ Sec. 28 (Qualifications of rehabilitation receiver); Sec. 31 (Rehabilitation receiver deemed an officer of the court); Sec. 32 (Grounds for removal of rehabilitation receiver); Sec. 38 (Qualifications of members of management committee); Sec. 39 (Employment of professionals); and Sec. 41 (Immunity of rehabilitation receiver and members of management committee based on good faith), FRIA.

¹⁰⁰ See, e.g. Secs. 21(d)(3) and (4) and (g) (Standards for upholding Rehabilitation Plan); Sec. 58 (Rescission or nullification of certain pre-commencement transactions); and 59 (Actions for rescission or nullification of such actions), FRIA.

¹⁰¹ Sec. 139, FRIA.

REACTION*

*Justice Japar B. Dimaampao***

Chief Justice Renato C. Corona
 Associate Justices of the Supreme Court
 Chancellor Adolfo S. Azcuna
 Chancellor Ameurfina A. Melencio Herrera
 Vice Chancellor Justo P. Torres, Jr.
 Presiding Justice Andres B. Reyes, Jr. of the Court of Appeals
 Presiding Justice Ernesto D. Acosta of the Court of Tax Appeals
 My colleagues in the Court of Appeals and
 Associate Justices of the Court of Tax Appeals
 Judges
 Law students,

A pleasant afternoon to one and all.

I would like to express my profound gratitude to Justice Dante Osorio Tinga for this opportunity to indulge in an intellectual discourse. I can only surmise that he chose me as one of the reactors because I happen to be a member of the Committee on Commercial Courts that drafted the 2008 Rules of Procedure on Corporate Rehabilitation and, on a personal note, I always consider him as my true mentor in the pith and marrow of the practice of law.

I find this lecture comprehensive and comprehensible. Comprehensive in the sense that it covers all the significant rules envisaged in the Financial Rehabilitation and

* Delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila. *Transcribed.*

** On April 2, 2004, after having served as Regional Trial Court Judge and Executive Judge of Mandaluyong City, Japar B. Dimaampao took his oath of office as Associate Justice of the Court of Appeals before President Gloria Macapagal-Arroyo.

At the age of 40, Justice Dimaampao holds the distinction of being the youngest magistrate ever to have been appointed to the Appellate Court.

His professional life, has been, for the most part, devoted to being an educator. Through perseverance and diligence, he gradually gained recognition as Professor of Law. He teaches Taxation, Commercial Law and Civil Law at the University of Santo Tomas, University of the East, Far Eastern University and Manuel L. Quezon University. In addition, he conducts Bar Review classes in various law schools all over the country.

In 2003, Justice Dimaampao was a finalist for the Judicial Excellence Awards. He was accorded the Model Law Professor Award by the Huwarang Pilipino Program; the privilege of being

Insolvency Act of 2010 or RA No. 10142. Comprehensible because it explicates the new Rules with lucidity and perspicuity.

A perusal of the new Rules, as expounded by my dear mentor, Justice Tinga, yields the following riveting concerns.

First, Section 3 of the FRIA declares that the proceedings shall be conducted in a summary and non-adversarial manner consistent with the declared objectives of this Act and in accordance with the Rules of Procedure which the Supreme Court may promulgate upon this point.

May creditors of a debtor question the validity of an order issued by a Rehabilitation Court invoking due process? In a case decided by the Court of Appeals, an order issued by a Rehabilitation Court denying the creditors' motion for presentation of additional evidence showing that the debtor is indeed insolvent was reversed and set aside on the ground that there was a violation of due process. The Court of Appeals reasoned out that the summary and non-adversarial character of the proceedings should not be used as a license to disregard reglementary requirements of due process. Given that due process can only be invoked when justice has not been duly served, the Subcommittee on Commercial Courts is expected to strike a balance between the invocation of due process and the summary or speedy disposition of rehabilitation cases.

Chairholder of the Pedro Concepcion Professorial Chair for Commercial Law at the Far Eastern University Institute of Law; and the honor of being distinguished as a Hall of Famer of the University of the East College of Law.

Justice Dimaampao likewise carries the distinction of being the first and only Muslim Senior State Prosecutor, Bar Reviewer, Professor of Law of the University of Santo Tomas, and Member of the University of the Philippines Law Center, Committee on Bar Examinations in Commercial Law and Taxation. He has published two books in taxation entitled *Tax Principles and Remedies* and *Basic Approach to Income Taxation*.

His recent concurrent positions include, among others, being Consultant of the Subcommittee on Special Rules for Special Commercial Courts, Professor II of the Department of Shari'a Law and Jurisprudence of the Philippine Judicial Academy of the Supreme Court, Professor of Law at the San Beda College Graduate School of Law and Business, and Lecturer of the MCLE in Taxation and Commercial Law.

He was educated at the University of the East where he obtained his BSBA degree in 1982 and LLB degree in 1987. A consistent honor student and university scholar all throughout his scholastic years, he passed the CPA Board Examinations in 1983, at the age of 19. Too young to be given a CPA license, he took up Law instead and passed the Bar in 1988.

"Japs", as he is fondly called by family and friends, draws strength and inspiration from his one and only wife, Ma. Gina Perez Villapafie of Mainit, Surigao del Norte. Born on December 27, 1963 in Marawi City, Lanao del Sur, he is the third son of Former Comelec Commissioner Magdara B. Dimaampao and Hadja Faridah (deceased).

Second, concerned debtors take issue with the creditor-initiated rehabilitation proceedings asserting that they have the upper hand in the formulation of the Rehabilitation Plan and the likelihood of scrambling opposition among the creditors for preferential treatment cannot be ignored. This assertion, to my mind, deserves scant consideration. You must understand that the Rehabilitation Plan is just a preliminary document and the assumptions, projections and the plan of payment and disposition of assets are subject to validation by the debtor and the Rehabilitation Court. The likelihood of jockeying for preferential treatment is not feasible because of this stay order, a measure that effectively prohibits the payment of claims during the rehabilitation proceedings.

Third, the key phrase that equality is equity in rehabilitation proceedings needs a clear cut interpretation. This has been construed to mean that all assets of a debtor under rehabilitation proceedings shall be held in trust for the equal benefit of creditors, precluding one creditor from obtaining advantage or preference over the others by expediency of execution, attachment or otherwise. Once the debtor is taken over by the receiver, creditors stand on equal footing, no one will be paid ahead of the others. Let us disabuse our minds from this notion that the creditors stand on equal footing to the effect that secured claims no longer enjoy the preference. Legal experts on the matter are of the view that equality exists insofar as non-enforcement of the claims during the pendency of rehabilitation proceedings is concerned. Secured creditors can still enjoy the preference upon the successful rehabilitation or liquidation of the debtor's assets. In fact, under Section 2 of the FRIA, it recognizes the rights of the creditors and this priority of claims. The Subcommittee on Commercial Courts, in the light of such absence of a clear definition of secured claim, may adopt the definition of secured claim under the 2008 Rules. It is a claim whose payment or fulfilment is secured by contract, law or any claim or credit enumerated under Articles 2241 and 2242 of the Civil Code and Article 110, as amended, of the Labor Code of the Philippines.

Fourth, as expanded by my mentor, it is clear that there are now seven exceptions to this stay order. They are quite exclusive, therefore *expressio unius est exclusio alterius* clearly applies. The FRIA has now accorded statutory *imprimatur* to the ruling of the Court in the case *MWSS v. Daway*, June 21, 2004, 432 SCRA 559, wherein the Supreme Court held that claim against a letter of credit is beyond the purview of this stay order. The FRIA also incorporates the proposal of the Bankers Association of the Philippines that foreclosure proceedings, or foreclosures initiated by the bank, should be excluded from this stay order. It is noticeable that there are other exceptions and these are included in the enumeration to address such clamor for exclusions such as claims involving stock market transactions, claims involving clearing and settlement of financial transactions. And take note, criminal actions are beyond the ambit of this stay order.

Fifth, corporate creditors have the right to oppose the Rehabilitation Plan. However, as provided for under the FRIA, the Rehabilitation Court may approve such Rehabilitation Plan even over the objection of the creditors. Section 80 of the FRIA, merely says that the Rehabilitation Court may approve the Rehabilitation Plan if the objection of the

creditor has no substantial merit. In other words, the opposition must be manifestly unreasonable. The Subcommittee on Special Commercial Courts may adopt, in this regard, the provision of Section 11 of Rule 4 regarding the meaning of this opposition of the creditor that is manifestly unreasonable. It provides three conditions: number 1 is that the Rehabilitation Plan must comply with the requirements provided in Section 18 of Rule 3 of the 2008 Rules. There are six requirements mentioned in the Rule 1 but, under FRIA there are 23 items. That is the difference. Number 2, the Rehabilitation Plan should provide the objecting class of creditors with payments whose present value, as projected in the plan, must be more than the amount that they would have received if the assets of the debtor were sold by the liquidator within the six-month period from the date of the filing of the petition. And number 3, the Rehabilitation Receiver has recommended the approval of the plan. The Subcommittee can take these into consideration.

Sixth, Justice Tinga's lecture reasonably underscores a striking innovation under the FRIA—the rehabilitation proceedings may be converted into liquidation proceedings. It finds support in Section 92 of the FRIA, as provided for in Section 25(c): the Rehabilitation Court may convert the pending court-supervised or pre-negotiated rehabilitation proceedings into liquidation proceedings if the Court finds that the debtor is insolvent and there is no substantial likelihood that the debtor will be rehabilitated. Conversion is also allowed under Section 72 as mentioned by Justice Tinga, and that is when no Rehabilitation Plan has been confirmed or has been approved by the Court within one year. It is also allowed under Section 75, which says that conversion may take place if the termination proceeding is due to failure of rehabilitation or dismissal of petitions other than technical or substantive grounds.

An interesting query then arises. Suppose an invitation for insolvency has been dismissed. Can that failed insolvency proceeding be converted into a rehabilitation proceeding? Apparently, the FRIA is silent on this. This may be addressed by the Subcommittee on the Commercial Courts. Needless to say, FRIA does not contain any prohibition against the conversion of insolvency proceedings into rehabilitation proceedings. Moreover, when a petition for insolvency has been dismissed, the implication is that the debtor can be restored to its former successful operation and insolvency.

One final reflection. Justice Tinga's discourse encapsulates the salient features of the Financial Rehabilitation and Insolvency Act of 2010 or RA No. 10142. Indeed it strikes right to the minds of the debtors and creditors who intend to file a petition for rehabilitation. Considering that the Subcommittee of the Special Commercial Courts is in the process of revising the Rules based on the provisions of the FRIA, it is but judicious for them to await the promulgation of the Rules which will likely materialize, God willing, in the second quarter of 2011. Of course, nothing can prevent them from filing petitions for rehabilitation and these will be governed by the FRIA. As accentuated by Justice Tinga, the Court, as always, will prove equal to the task. In performing this assigned judicial chore, the Subcommittee on Commercial Courts must be guided by

the constitutional rights provided under Article 8, Section 5 of the Constitution: that Rules shall provide a simplified and an inexpensive procedure for the disposition of cases and shall not diminish, increase or modify substantive rights. In addition, the Subcommittee on Special Commercial Courts must consider the state policy initiated in Section 2 of the FRIA and that is the collective and realistic resolution and adjustment of competing claims and property rights through a timely, fair, transparent, effective and efficient rehabilitation and liquidation of debtors.

Thank you and God bless us all.

REACTION*

*Dean Eduardo D. De Los Angeles***

I commend Justice Dante O. Tinga for his clear and concise professorial lecture on corporate rehabilitation, which traces the history of Republic Act No. 10142 otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA), and which compares it with the 2008 Rules of Procedure on Corporate Rehabilitation.

In his comparison, he invites our attention to changes and innovations made by FRIA to the 2008 Rules, which he co-authored and, which according to him, have ruefully become “archaic” as they have been “relegated to the dustbin of history after only one year of existence.”

I have only four short comments to make.

First, citing Section 12 of the FRIA, Justice Tinga aptly noted that there are three types of debtors who may avail of **voluntary** rehabilitation: (a) a sole proprietorship duly registered with the Department of Trade and Industry, (b) a partnership duly registered with the Securities and Exchange Commission, and (c) a corporation duly organized and existing under Philippine laws. However, it is noticeable that Section 13 of the FRIA permits certain creditors to institute **involuntary** rehabilitation proceedings against the “debtor,” defined in Section 4(k) to include “an individual debtor who has become insolvent.” In turn, Section 4(o) defines an individual debtor as “a natural person who is a resident and citizen of the Philippines that has become insolvent.” Hence, an individual—even if he has not registered his business with the DTI—may be subjected to **involuntary** rehabilitation.

What is not explained is the reason why the FRIA does not permit an individual, who is in need of rehabilitation, to file for **voluntary** rehabilitation and yet be subject

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Delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila.

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Dean de los Angeles was admitted to the Philippine Bar in 1967. His area of concentration is in corporate matters, contracts, litigation and other forms of alternative dispute resolution. He actively practices law before the courts and quasi-judicial agencies.

Shortly after obtaining his Masteral Degree in Columbia University in 1970, Dean de los Angeles became a Professorial Lecturer at the Ateneo de Manila Law School. He taught Obligations and Contracts, Credit Transactions, Sales, Persons and Family Relations, Consumer Protection, Land Titles and Deeds, Civil Procedure, Evidence, Legal Ethics and Clinical Legal Education. From 1984–1990, he was Dean of the Ateneo de Manila Law School for 25 years. He has been a Bar Reviewer. In 1987, while he was President of the Philippine Association of Law Schools, he assisted in designing the Model Law Curriculum which is used by the majority of law schools now use in the Philippines. In 1989, he introduced the Juris Doctor Program at the Ateneo de Manila Law School.

to **involuntary** rehabilitation. Indeed, if the FRIA was enacted to protect both debtor and creditors, there is no reason to deprive the individual debtor, who has not registered himself or herself as a sole proprietorship with the DTI, of the option to voluntarily apply for rehabilitation before some overly aggressive creditors corner all his/her assets to his/her detriment and that of the other creditors. It must be pointed out that individual debtors cannot avail of the 2008 Rules because they apply only to corporations, partnerships and associations. Neither can individuals avail of Act 1956 otherwise known as the Insolvency Law because FRIA has expressly and totally repealed such law.

While it is true that under Chapter VI of the FRIA, an individual debtor can petition for suspension of payments, under Section 96, a suspension order—unlike a commencement order—does not affect properties held as security by secured creditors.

Second, Justice Tinga has shown acumen in perceiving that the FRIA was designed not only to protect the debtor and its creditors, but also the general public, and in so doing, the FRIA relies on the police power so that the State can intervene, balance and regulate their interests.

Accordingly, the FRIA contains provisions designed to make rehabilitation effective and expeditious. It discourages and minimizes frivolous petitions for rehabilitation. It shortens proceedings. It addresses bankruptcy fraud, provides for a pool of professional managers and experts, and even grants incentives to distressed companies, such as waiver of taxes and fees due the government during the rehabilitation proceedings. Undoubtedly, the crucial stay or suspension order, which is included in the commencement order, preserves the *status quo ante* and provides for a fixed period within which the court can determine if the debtor can still be rehabilitated, and whether the rehabilitation plan is viable for the best interest of everyone.

He is also a Professorial Lecturer at the Philippine Judicial Academy and the San Beda College Graduate School of Law. In 1995, he was elected Regent of Manuel Luis Quezon University and was elected President of that University in 2004.

He has published numerous articles on legal education, alternative dispute resolution and the securities law, some of which have been printed in international law journals. In 1992, he was elected President of the Philippine Bar Association. From 1986–1987, he was a Consultant of the Supreme Court Committee on the Revision of the Rules of Court. In 1999, he became the Chair of the Alternative Dispute Resolution Department of the Philippine Judicial Academy, promoting court-annexed mediation in various courts in the Philippines.

Among other awards, he received the following: the Justice Roman Ozaeta Award from the Philippine Bar Association; the Thomas Fitzpatrick Professorial Chair in Management from Ateneo de Manila; the Ulirang Ama from National Father's Day and Mother's Day Foundation; and the Outstanding President Award from Rotary International District 3810.

On the other hand, the commencement order also empowers and obliges the rehabilitation receiver to review and obtain all records to which the debtor's management and directors have access, including bank accounts. This ensures transparency and prevents fraud. The purpose is to uncover all the assets, the truth and extent of liabilities, and the genuineness and validity of all the transactions and obligations of the debtor.

Should the receiver discover that the petition is a sham intended only to delay the enforcement of the rights of the creditors, or that the petition and its attachments are materially false, or that the debtor has committed fraud, the receiver shall submit a report to the court within 40 days from the initial hearing and seek the dismissal of the petition.

On the other hand, should the receiver determine that the debtor is or about to dissipate and waste its assets, or is grossly mismanaging itself, then the receiver can file a motion with the court to authorize him to take-over management or for the court to appoint a management committee to undertake the management of the debtor.

Any criminal action against the individual debtor or owner, partner, director or officer of the debtor is also not affected by the commencement order.

These illustrate that the FRIA is intolerant of fraud and will not protect a malevolent debtor, because it safeguards the interests of the creditors and the general public.

Third, notwithstanding the avowed legislative intent to expedite resolution of petitions for rehabilitation, it is noticeable that unlike the 2008 Rules, the FRIA does not specifically require the debtor to attach to its Petition for Voluntary Rehabilitation a copy of the Audited Financial Statement at the end of its last fiscal year. To my mind, an Audited Financial Statement immediately reveals the financial condition of the debtor and whether it needs and is susceptible to rehabilitation. The Auditor's Report or the lack of it should also indicate whether the court can rely on any financial statement submitted by the debtor. Under the Philippine Standard on Auditing 560, when apprised of subsequent events which may impact on previously issued financial statements or which may require their amendment, accountants and/or auditors immediately seek a meeting with the debtor to review its financial statement(s) to determine whether there is need to amend such statements. If the debtor refuses to meet or cooperate, the accountant and/or auditor can issue a notice to the appropriate government agencies and the court that they can no longer rely on the audited financial statements. That way, court action on the Petition can become faster.

The FRIA—unlike the 2008 Rules—does not also specifically require an Affidavit of General Financial Condition to be attached to the Petition. Among others, a responsible officer of the debtor is required to answer the following questions in the affidavit:

- Has the debtor properly maintained its books and are they updated?
- Have all proper returns been made to the various government agencies requiring the same?

- When did the debtor first become aware of its problems?
- Has the debtor within the 12 months preceding the filing of the petition:
 - (a) made any payments, returned any goods or delivered any property to any of its creditors, except in the normal course of business?
 - (b) executed any mortgage, pledge, or security over any of its properties in favor of any creditor?
 - (c) transferred or disposed of any of its properties in payment of any debt?
 - (d) sold, disposed of, or removed any of its property except in the ordinary course of business?
 - (e) sold any merchandise at less than fair market value or purchased merchandise or services at more than fair market value?
- What were the sales for the last three years and what percentage of the sales represented the profit or mark-up?
- What were the profits or losses for the debtor for the last three years?
- What are the causes of the problems of the debtor? Please provide particulars?
- How much do you estimate is needed to rehabilitate the debtor?
- Has any person expressed interest in investing new money into the debtor?
- Are there any pending and threatened legal actions against the debtor? If so, please provide particulars.
- Have employees' wages and salaries been kept current? If not, how much are in arrears and what time period do the arrears represent?

Certainly, the information in such affidavit will be helpful to the court in evaluating the Petition for Rehabilitation within the shortest possible time.

Fourth, while the FRIA has introduced many substantive provisions aimed at making rehabilitation effective, as it even adopted the UNCITRAL Model Law on cross-border insolvency, it cannot be denied that there is a need to augment provisions on procedure, such as those mentioned earlier. Precisely, the FRIA looks upon the Supreme Court to address such deficiencies. Through the Subcommittee now chaired by Justice Arturo D. Brion, I share Justice Tinga's view that the Supreme Court will be more than equal to the task.

**THE EVOLVING LEGAL PRACTICE: THE SEVENTH
METROBANK FOUNDATION PROFESSORIAL CHAIR LECTURE
OF JUSTICE DANTE O. TINGA***

Chief Justice Renato C. Corona
Supreme Court

Philippine Judicial Academy Chancellor Adolfo S. Azcuna, Justice Ameurfina Melencio Herrera, our esteemed professorial lecturer, retired Justice Dante O. Tinga, Metrobank Foundation President Aniceto Sobrepeña, officials and colleagues in the Supreme Court and Court of Appeals, distinguished guests, ladies and gentlemen, good afternoon.

I am pleased to have been given this opportunity to listen to the Seventh Metrobank Foundation Professorial Chair Lecture of Justice Dante O. Tinga. This occasion, once again, re-affirms the status and legacy of the Academy as “the training school for justices, judges, court personnel, lawyers and aspirants to judicial posts as well as being the nation’s watchdog in terms of excellence in the judiciary.”¹ We therefore express our deep gratitude to our generous partner, the Metrobank Foundation, for not only contributing to the enrichment of the judicial education of our court officials and personnel but also enhancing the standards of the practice of law. This encourages our corps of professors, considered as some of the finest minds in the legal profession, to sharpen their legal saw, so to speak, and take time off from their busy schedules to author and articulate their innovative concepts and approaches to jurisprudence which, for sure, will be studied for years to come.

Justice Tinga was one of our brethren at the Supreme Court, where he served our people for six years. This is where he became “younger in spirit” which he attributes to “the rejuvenating effect of the vigorous exercise of intellectual faculties.”²

Indeed, Justice Tinga’s extensive experience in the academe, more than 25 years of teaching I am told, is known to all of us. When he was in the Court, the depth and quality of his research, his well-crafted decisions and expert opinions always went a step further by going beyond the usual established jurisprudence. He made sure that

* Closing Remarks delivered at the *Seventh Metrobank Foundation Professorial Chair Lecture* held on November 24, 2010, at the Court of Appeals Auditorium, Centennial Building, Court of Appeals, Manila.

¹ The Philippine Judicial Academy was first created by the Supreme Court through Administrative Order 35-96 on March 16, 1996, and given statutory mandate by Republic Act No. 8557 on February 28, 1998.

² Justice Dante O. Tinga’s Speech on his retirement, May 11, 2009.

his scholarly treatises covered even the most recent researches and writings of the finest minds in the legal profession. It is therefore not surprising that right after retirement, Justice Tinga should be awarded the Metrobank Professorial Chair. As they say, things are really just a matter of time and I am fortunate that it came during my watch as Chair of the Board of Trustees of the Philippine Judicial Academy. Given our lecturer's solid background in law and academe, we saw the same undiminished rigor and discipline in his lecture today. Thank you, Mr. Justice Tinga.

Today's professorial chair lecture on corporate rehabilitation is timely and relevant, given the new law (Financial Rehabilitation and Insolvency Act) and the Supreme Court's implementation of the 2008 Rules of Procedure on Corporate Rehabilitation. As part of our contribution to make the Philippines attractive to foreign investments, these new law and set of rules aim to expedite and improve court procedures for petitions for rehabilitation or re-organizations of corporations.³ In addition, these new law and rules will help debtors recover faster from financial difficulties even as they ensure fair treatment of creditors.

One of its salient features is the recognition of foreign proceedings. This was substantially taken from the United Nations Commission on International Trade Law (UNCITRAL) model rules on recognition of foreign insolvency proceedings.⁴ Rule 7 of A.M. No. 00-8-10-SC applies where assistance is sought in a Philippine court by a foreign court or a foreign representative in connection with a foreign proceeding; assistance is sought in a foreign State in connection with a domestic proceeding governed by these Rules; or a foreign proceeding and a domestic proceeding are concurrently taking place.

Recent media coverage of businesses undergoing corporate rehabilitation, such as the College Assurance Plan (CAP), which the High Court upheld,⁵ heightened the public's interest in this legal option available to so-called distressed corporations. Thus, this professorial chair lecture is a welcome exercise for every one to once again re-visit this subject of commercial law. The formulation and practice of law is complex and dynamic. Its practice and jurisprudence therefore need to be studied and articulated.

We know for a fact that there is no such thing as an absolute truth in our legal literature. Legal doctrines are in constant change as new laws are crafted and passed to replace old ones. A re-examination of our jurisprudence is thus imperative to keep pace, remain relevant and be in sync with the times.

³ On December 2, 2008, the Supreme Court *en banc* issued A.M. No. 00-8-10-SC, which approved the Rules of Procedure on Corporate Rehabilitation. The new Rules took effect on January 16, 2009.

⁴ James A. Loyola, "Supreme Court Implements New Rules on Corporate Rehabilitation," Manila Bulletin, January 13, 2009.

⁵ G.R. No. 171681, September 11, 2009.

Our chairholder shares a similar view. He once cautioned a graduating law school class a few years ago: “We should not fear but try to embrace the continuing modernization of law even if it leads to directions that our own law school education might not have prepared us for.”⁶

Justice Tinga’s diverse roles in his professional career have put him in the best position to explain the evolution of law and jurisprudence. I recall Justice Tinga telling us on his day of retirement last year, “Any law student may feel able to grasp the intellectual theorems we discuss, but it takes a lifetime dedicated to equal justice and the rule of law to take on the social responsibility of our judicial task.” This came from someone who, before he received what he considers “the gift of education in one of the most exclusive institutions of learning in the planet”⁷ which is the Supreme Court, went through hard times to attain his aspirations in life.

Education can take up an entire lifetime. It is a never-ending process of acquiring knowledge, information and experience, of discovering new things and learning “to think out of the box.” Justice Tinga’s lecture this afternoon has been such an interesting experience and once again, I would like to thank you all for it.

The law is certainly alive and grows with the actions and practices of the people it guides. As we enter a new phase in our national life, the discussions this afternoon will hopefully help us move forward in the right direction.

Muli, maraming salamat sa lahat ng narito. Isang magandang hapon sa inyong lahat!

⁶ Justice Dante O. Tinga’s Address at the Commencement Exercise of the Ateneo de Manila School of Law, April 27, 2008.

⁷ Justice Dante O. Tinga’s Speech on his retirement, May 11, 2009.

A.M. No. 00-8-10-SC
RULES OF PROCEDURE ON CORPORATE REHABILITATION
Effective January 16, 2009

RULE 1
COVERAGE

SECTION 1. *Scope.* – These Rules shall apply to petitions for rehabilitation of corporations, partnerships and associations pursuant to Presidential Decree No. 902-A, as amended.

SEC. 2. *Applicability to Rehabilitation Cases Transferred from the Securities and Exchange Commission.* – Cases for rehabilitation transferred from the Securities Exchange Commission to the Regional Trial Court pursuant to Republic Act No. 8799, otherwise known as The Securities Regulation Code, shall likewise be governed by these Rules.

RULE 2
DEFINITION OF TERMS AND CONSTRUCTION

SECTION 1. *Definition of Terms.* – For purpose of these Rules:

“Administrative Expenses” shall refer to (a) reasonable and necessary expenses that are incurred in connection with the filing of the petition; (b) expenses incurred in the ordinary course of business after the issuance of the stay order, excluding interest payable to the creditors for loans and credit accommodations existing at the time of the issuance of the stay order, and (c) other expenses that are authorized under these Rules.

“Affidavit of General Financial Condition” shall refer to a verified statement on the general financial condition of the debtor required in Section 2, Rule 4 of these Rules.

“Affiliate” is a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation.

“Asset” is anything of value that can be in the form of money, such as cash at the bank or amounts owed; fixed assets such as property or equipment; or intangibles including intellectual property, the book value of which is shown in the last three audited financial statement immediately preceding the filing of the petition. In case the debtor is less than three years in operation, it is sufficient that the book value is based on the audited financial statement/s for the two years or year immediately preceding the filing of petition, as the case may be.

“Board of Directors” shall include the executive committee or the management of partnership or association.

“Claim” shall include all claims or demands of whatever nature or charter against a debtor or its property, whether for money or otherwise.

“Control” is the power of a parent corporation to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one-half of the voting power of an enterprise unless, in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half or less of the voting power of an enterprise when there is power.

- (a) Over more than one-half of the voting rights by virtue of an agreement with investors;
- (b) To direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
- (c) To appoint or remove the majority of the members of the board of directors or equivalent governing body; or
- (d) To cast the majority votes at meetings of the board of directors or equivalent governing body.

“Creditor” shall mean any holder or a claim.

“Court” shall refer to the proper Regional Trial Court designated to hear and decide the cases contemplated under these Rules.

“Days” shall refer to calendar days unless otherwise provided in these Rules.

“Debtor” shall mean any corporation, partnership or association or a group of companies, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules.

“Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding.

“Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of rehabilitation or reorganization.

“Foreign Representative” means person or entity, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or rehabilitation of the debtor or act as a representative of the foreign proceeding.

“Group of companies” refers to, and can cover only, corporations that are financially related to one another as parent corporation, subsidiaries and affiliates.

When the petition covers a group of companies, all reference under these Rules to “debtor” shall include and apply to the group of companies.

“*Liabilities*” shall refer to monetary claims against the debtor, including stockholder’s advances that have been recorded in the debtor’s audited financial statements as advances for future subscriptions.

“*Parent*” is a corporation which has control over another corporation directly or indirectly through one or more intermediaries.

“*Rehabilitation*” shall mean the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it immediately liquidated.

“*Secured claim*” shall refer to any claim whose payment or fulfillment is secured by contract or by law, including any claim or credit enumerated under Articles 2241 and 2242 of the Civil Code and Article 110, as amended, of the Labor Code of the Philippines.

“*Subsidiary*” means a corporation more than 50 percent of the voting stock of which is owned or controlled directly or indirectly through one or more intermediaries by another corporation, which thereby becomes its parent corporation.

“*Unsecured claim*” shall mean any claim other than a secured claim.

Sec. 2. Construction. – These Rules shall be liberally construed to carry out the objectives of Section 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious and inexpensive determination of cases. Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

RULE 3

GENERAL PROVISIONS

SECTION 1. Nature of Proceedings. – Any proceeding initiated under these Rules shall be considered *in rem*. Jurisdiction over all persons affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper or general circulation in the Philippines in the manner prescribed by these Rules.

The proceedings shall also be summary and non-adversarial in nature. The following pleadings are prohibited:

- (a) Motion to dismiss;
- (b) Motion for a bill of particulars;

- (c) Petition for relief;
- (d) Motion for extension;
- (e) Motion for postponement;
- (f) Third-party complaint;
- (g) Intervention;
- (h) Motion to hear affirmative defenses; and
- (i) Any pleading or motion which is similar to or of like effect as any of the foregoing.

Any pleading, motion, opposition, defense or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records, and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits. The court may decide matters on the basis of affidavits and other documentary evidence. Where necessary, the court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.

Sec. 2. Venue. – Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the debtor as specified in its articles of incorporation or partnership. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the regional trial court of the city or municipality where the head office is located.

A joint petition by a group of companies shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the parent company, as specified in its Articles of Incorporation.

Sec. 3. Service of Pleadings and Documents. – When so authorized by the court, any pleading and/or document required by these Rules may be filed with the court and/or served upon the other parties by facsimile transmission (fax) or electronic mail (e-mail). In such cases, the date of transmission shall be deemed to be the date of service. Where the pleading or document is voluminous, the court may, upon motion, waive the requirement of service; *provided* that a copy thereof together with all its attachments is duly filed with the court and is made available for examination and reproduction by any party, and *provided*, further, that a notice of such filing and availability is duly served on the parties.

Sec. 4. Trade Secrets and Other Confidential Information. – Upon motion, the court may issue an order to protect trade secrets or other confidential research, development or commercial information belonging to the debtor.

Sec. 5. Executory Nature of Orders. – Any order issued by the court under these Rules is immediately executory. A petition to review the order shall not stay the execution of the order unless restrained or enjoined by the appellate court. Unless otherwise provided in these Rules, the review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court; *provided*, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable and speedy manner.

Sec. 6. Nullification of Illegal Transfers and Preferences. – Upon motion the court may nullify any transfer of property or any other conveyance, sale, payment or agreement made in violation of its stay order or in violation of these Rules.

Sec. 7. Stay Order. – If the court finds the petition to be sufficient in form and substance, it shall; not later than five working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; *provided*, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided*, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; *provided*, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities except as provided in items (e), (f) and (g) of this Section or when ordered by the court pursuant to Section 10 of Rule 3; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) directing the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval; (h) fixing the dates of the initial hearing on the petition not earlier than 45 days but not later than 60 days from the filing thereof; (i) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two consecutive weeks; (j) directing the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the creditors named in the petition and the appropriate regulatory agencies such as, but not limited to, the Securities and Exchange Commission, the Bangko Sentral ng

Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission; (k) directing the petitioner that foreign creditors with no known addresses in the Philippines be individually given a copy of the stay order at their foreign addresses; (l) directing all creditors and all interested parties (including the regulatory agencies concerned) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than 15 days before the date of the first initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (m) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor.

Sec. 8. Service of Stay Order on Rehabilitation Receiver. – The petitioner shall immediately serve a copy of the stay order on the rehabilitation receiver appointed by the court, who shall manifest his acceptance or non-acceptance of his appointment not later than 10 days from receipt of the order.

Sec. 9. Period of Stay Order. – The stay order shall be effective from the date of its issuance until the approval of the rehabilitation plan or the dismissal of the petition.

Sec. 10. Relief from, Modification, or Termination of Stay Order.

- (a) The court may, upon motion, terminate, modify, or set conditions for the continuance of the stay order, or relieve a claim from the coverage thereof upon showing that (1) any of the allegations in the petition, or any of the contents of any attachment, or the verification thereof has ceased to be true; (2) a creditor does not have adequate protection over property securing its claims; (3) the debtor's secured obligation is more than the fair market value of the property subject of the stay and such property is not necessary for the rehabilitation of the debtor; or (4) the property covered by the stay order is not essential or necessary to the rehabilitation and the creditor's failure to enforce its claim will cause more damage to the creditor than to the debtor.
- (b) For purposes of this Section, the creditor lacks adequate protection if it can be shown that:
 - (1) The debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;
 - (2) The debtor fails or refuses to take commercially reasonable steps to maintain the property; or
 - (3) The property has depreciated to an extent that the creditor is undersecured

- (c) Upon showing of the creditor's lack of adequate protection, the court shall order the rehabilitation receiver to (1) make arrangements to provide for the insurance or maintenance of the property, or (2) to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court shall modify the stay order to allow the secured creditor lacking adequate protection to enforce its claim against the debtor; *provided*, however, that the court may deny the creditor the remedies in this paragraph if such remedies would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

Sec. 11. *Qualifications of Rehabilitation Receiver.*

- (a) In the appointment of the rehabilitation receiver, the following qualifications shall be taken into consideration by the court:
- (1) Expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor;
 - (2) Knowledge in management, finance and rehabilitation of distressed companies;
 - (3) General familiarity with the rights of creditors in suspension of payments or rehabilitation and general understanding of the duties and obligations of a rehabilitation receiver;
 - (4) Good moral character, independence and integrity;
 - (5) Lack of conflict of interest as defined in this Section; and
 - (6) Willingness and ability to file a bond in such amount as may be determined by the court.
- (b) Without limiting the generality of the following, a rehabilitation receiver may be deemed to have a conflict of interest if:
- (1) He is a creditor or stockholder of the debtor;
 - (2) He is engaged in a line of business which competes with the debtor;
 - (3) He is, or was within two years from the filing of the petition, a director, officer, or employee of the debtor or any of its present creditors, or the auditor or accountant of the debtor;
 - (4) He is, or was within two years from the filing of the petition, an underwriter of the outstanding securities of the debtor;
 - (5) He is related by consanguinity or affinity within the fourth civil degree to any creditor, stockholder, director, officer, employee, or underwriter of the debtor;
or
 - (6) He has any other direct or indirect material interest in the debtor or any creditor.

Sec. 12. Powers and Functions of Rehabilitation Receiver. – The rehabilitation receiver shall not take over the management and control of the debtor but shall closely oversee and monitor the operations of the debtor during the pendency of the proceedings. For this purpose, the rehabilitation receiver shall have the powers, duties and functions of a receiver under Presidential Decree No. 902-A, as amended, and the Rules of Court.

The rehabilitation receiver shall be considered as an officer of the court. He shall be primarily tasked to study the best way to rehabilitate the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval. Accordingly, he shall have the following powers and functions:

- (a) To verify the accuracy of the petition, including its annexes such as the *Schedule of Debts and Liabilities* and the *Inventory of Assets* submitted in support to the petition;
- (b) To accept and incorporate, when justified, amendments to the *Schedule of Debts and Liabilities*;
- (c) To recommend to the court the disallowance of claims and rejection of amendments to the *Schedule of Debts and Liabilities* that lack sufficient proof and justification;
- (d) To submit to the court and make available for review by the creditors, a revised *Schedule of Debts and Liabilities*;
- (e) To investigate the acts, conduct, properties, liabilities and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof; and, any other matter relevant to the proceeding or to the formulation of a rehabilitation plan;
- (f) To examine under oath the directors and officers of the debtor and any other witnesses that he may deem appropriate;
- (g) To make available to the creditors documents and notices necessary for them to follow and participate in the proceedings;
- (h) To report to the court any fact ascertained by him pertaining to the causes of the debtor's problems, fraud, preferences, dispositions, encumbrances, misconduct, mismanagement and irregularities committed by the stockholders, directors, management, or any other person against the debtor;
- (i) To employ such person or persons such as lawyers, accountants, appraisers and staff as are necessary in performing his functions and duties as rehabilitation receiver;
- (j) To monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business;

- (k) To evaluate the existing assets and liabilities, earnings and operations of the debtor;
- (l) To determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders and the general public;
- (m) To study the rehabilitation plan proposed by the debtor or any rehabilitation plan submitted during the proceedings, together with any comments made thereon;
- (n) To prohibit and report to the court any encumbrance, transfer or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court;
- (o) To prohibit and report to the court any payments outside of the ordinary course of business;
- (p) To have unlimited access to the debtor's employees, premises, books, records and financial documents during business hours;
- (q) To inspect, copy, photocopy or photograph any document, paper, book, account or letter, whether in the possession of the debtor or other persons;
- (r) To gain entry into any property for the purpose of inspecting, measuring, surveying or photographing it or any designated relevant object or operation thereon;
- (s) To take possession, control and custody of the debtor's assets;
- (t) To notify counterparties and the court as to contracts that the debtor has decided to continue to perform the breach;
- (u) To be notified of and to attend all meetings of the board of directors and stockholder of the debtor;
- (v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate;
- (w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan;
- (x) To recommend the appointment of a management committee in the cases provided for under Presidential Decree No. 902-A, as amended;
- (y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors or the general public;
- (z) To apply to the court for any order or directive that he may deem necessary or desirable to aid him in the exercise of his powers and performance of his duties and functions; and

- (aa) To exercise such other powers as may from time to time be conferred upon him by the court.

Sec. 13. Oath and Bond. – Before entering upon his powers, duties and functions, the rehabilitation receiver must be sworn in to perform them faithfully, and must post a bond executed in favor of the debtor in such sum as the court may direct, to guarantee that he will faithfully discharge his duties and obey the orders of the court. If necessary, he shall also declare under oath that he will perform the duties of a trustee of the assets of the debtor, will act honestly and in good faith, and deal with the assets of the debtor on a commercially reasonable manner.

Sec. 14. Fees and Expenses. – The rehabilitation receiver and the persons hired by him shall be entitled to reasonable professional fees and reimbursement of expenses which shall be considered as administrative expenses.

Sec.15. Immunity from Suit. – The rehabilitation receiver shall not be subject to any action, claim or demand in connection with any act done or omitted by him in good faith in the exercise of his functions and powers herein conferred.

Sec. 16. Reports. – The rehabilitation receiver shall file a written report every three months to the court or as often as the court may require on the general condition of the debtor. The report shall include, at the minimum, interim financial statements of the debtor.

Sec. 17. Dismissal of Rehabilitation Receiver. – A rehabilitation receiver may, upon motion, be dismissed by the court on the following grounds: (a) if he fails, without just cause, to perform any of his powers and functions under these Rules; or (b) on any of the grounds for removing a trustee under the general principles of trusts.

Sec. 18. Rehabilitation Plan. – The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non-impairment of their security liens or interests; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

SEC. 19. *Repayment Period.* – If the rehabilitation plan extends the period for the debtor to pay its contractual obligations, the new period should not extend beyond 15 years from the expiration of the stipulated term existing at the time of filing of the petition.

SEC. 20. *Effects of Rehabilitation Plan.* – The approval of the rehabilitation plan by the court shall result in the following:

- (a) The plan and its provisions shall be binding upon the debtor and all persons who may be affected thereby, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled;
- (b) The debtor shall comply with the provisions of the plan and shall take all actions necessary to carry out the plan;
- (c) Payments shall be made to the creditors in accordance with the provisions of the plan;
- (d) Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and
- (e) Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented.

SEC. 21. *Revocation of Rehabilitation Plan on Grounds of Fraud.* – Upon motion, within 90 days from the approval of the rehabilitation plan, and after notice and hearing, the court may revoke the approval thereof on the ground that the same was secured through fraud.

SEC. 22. *Alteration or Modification of Rehabilitation Plan.* – An approved rehabilitation plan may, upon motion, be altered or modified if, in the judgment of the court, such alteration or modification is necessary to achieve the desired targets or goals set forth therein.

SEC. 23. *Termination of Proceedings.* – The court shall, upon motion or upon recommendation of the rehabilitation receiver, terminate the proceeding in any of the following cases:

- (a) Dismissal of the petition;
- (b) Failure of the debtor to submit the rehabilitation plan;
- (c) Disapproval of the rehabilitation plan by the court;
- (d) Failure to achieve the desired targets or goals as set forth in the rehabilitation plan;

- (e) Failure of the debtor to perform its obligations under the plan;
- (f) Determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or
- (g) Successful implementation of the rehabilitation plan.

Sec. 24. Discharge of Rehabilitation Receiver. – Upon termination of the rehabilitation proceedings, the rehabilitation receiver shall submit his final report and accounting with such period of time as the court will allow him. Upon approval of his report and accounting, the court shall order his discharge.

RULE 4 DEBTOR-INITIATED REHABILITATION

SECTION 1. Who May Petition. – Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, may petition the proper regional trial court for rehabilitation.

A group of companies may jointly file a petition for rehabilitation under these Rules when one or more of its constituent corporations foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other member companies of the group and/or participation on the other member companies of the group is essential under the terms and conditions of the proposed rehabilitation plan.

Sec. 2. Contents of Petition.

- (a) The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts: (1) the name and business of the debtor; (2) the nature of the business of the debtor; (3) the history of the debtor; (4) the cause of its inability to pay its debts; (5) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (6) threats or demands to enforce claims or liens against the debtor; and (7) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees and stockholders.
- (b) The petition shall be accompanied by the following documents:
 - (1) An audited financial statement of the debtor at the end of its last fiscal year;
 - (2) Interim financial statements as of the end of the month prior to the filing of the petition;

- (3) A *Schedule of Debts and Liabilities* which lists all the creditors of the debtor, indicating the name and last address of record of each creditor; the amount of each claim as to principal, interest, or penalties due as of the date of filing; the nature of the claim; and any pledge, lien, mortgage judgment or other security given for the payment thereof;
- (4) An *Inventory of Assets* which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a *Schedule of Accounts Receivable* which must indicate the amount of each, the persons from whom due, the date of maturity and the degree of collectibility categorizing them as highly collectible to remotely collectible;
- (5) A rehabilitation plan which conforms with the minimal requirements set out in Section 18 of Rule 3;
- (6) A *Schedule of Payments and Disposition of Assets* which the debtor may have effected within three months immediately preceding the filing of the petition;
- (7) A *Schedule of Cash Flow* of the debtor for three months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three months;
- (8) A *Statement of Possible Claims* by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;
- (9) An *Affidavit of General Financial Condition* which shall contain answers to the questions or matters prescribed in Annex "A" hereof;
- (10) At least three nominees for the position of rehabilitation receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax numbers and e-mail address; and
- (11) A certificate attesting under oath that (i) the filing of the petition has been duly authorized; and (ii) the directors and stockholders of the debtor have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness;

alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

(c) Five copies of the petition shall be filed with the court.

Sec. 3. Verification by Debtor. – The petition filed by the debtor must be verified by an affidavit of a responsible officer of the debtor and shall be in a form substantially as follows:

I, _____, (position) of (name of petitioner), do solemnly swear that the petitioner has been duly authorized to file the petition and that the stockholders and board of directors (or governing body) have approved and/or consented to, in accordance with law, all actions or matters necessary or desirable to rehabilitate the debtor. The petition is being filed to protect the interests of the debtor, the stockholders, the inventors and the creditors of the debtor, which warrant the appointment of a rehabilitation receiver. There is no petition for insolvency filed with any other body, court of tribunal affecting the petitioner. The *Inventory of Assets* and the *Schedule of Debts and Liabilities* contains a full, correct and true description of all debts and liabilities and of all goods, effects, estate and property of whatever kind of class belonging to petitioner. The *Inventory* also contains a full, correct and true statement of all debts owing or due to petitioner, or to any person or persons in trust for petitioner and of all securities and contracts whereby any money may hereafter become due or payable to petitioner or by or through which any benefit or advantage may accrue to petitioner. The petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of petitioner. Petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the *Inventory of Assets*. Petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount. Petitioner, its officers, directors and stockholders have not, directly or indirectly, concealed, fraudulently sold or otherwise fraudulently disposed of, any part of petitioner's real or personal property, estate, effects or rights of action, and petitioner, its officers, directors and stockholders have not in any way compounded with any of its creditors in order to give preference to such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any manner any creditor to whom petitioner is indebted. Petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence.

Sec. 4. Opposition to or Comment on Petition. – Every creditor of the debtor or any interested party shall file his verified opposition to or comment on the petition not later than 15 days before the date of the initial hearing fixed in the stay order. After such time, no creditor or interested party shall be allowed to file any comment thereon or opposition thereto without leave of court.

If the *Schedule of Debts and Liabilities* omits a claim or liability, the creditor concerned shall attach to its comment or opposition a verified statement of the obligations allegedly due it.

Sec. 5. Initial Hearing.

- (a) On or before the initial hearing set in the order mentioned in Section 7 of Rule 3, the petitioner shall file a publisher's affidavit showing that the publication requirements and a petitioner's affidavit showing that the notification requirement for foreign creditors had been complied with, as required in the stay order.
- (b) Before proceeding with the initial hearing, the court shall determine whether the jurisdictional requirements set forth above had been complied with. After finding that such requirements are met, the court shall ensure that the parties consider in detail all of the following:
 - (1) Amendments to the rehabilitation plan proposed by the debtor;
 - (2) Simplification of the issues;
 - (3) The possibility of obtaining stipulations and admission of facts and documents, including resort to request for admission under Rule 26 of the Rules of Court;
 - (4) The possibility of amicably agreeing on any issue brought up in the comments on, or opposition to, the petition;
 - (5) Referral of any accounting, financial and other technical issues to an expert;
 - (6) The possibility of submitting the petition for decision on the basis of the comments, opposition, affidavit and other documents on record;
 - (7) The possibility of a new rehabilitation plan voluntarily agreed upon by the debtor and its creditors; and
 - (8) Such other matters as may aid in the speedy and summary disposition of the case.

Sec. 6. Additional Hearings. – The court may hold additional hearings as part of the initial hearing contemplated in these Rules but the initial hearing must be concluded not later than 90 days from the initial date of the initial hearing fixed in the stay order.

Sec. 7. Order After Initial Hearing.

- (a) Within 20 days after the last hearing, the court shall issue an order which shall:
 - (1) Give due course to the petition and immediately refer the petition and its annexes to the rehabilitation receiver who shall evaluate the rehabilitation plan and submit his recommendations to the court not later than 90 days from the date of the last initial hearing, if the court is satisfied that there is merit to the petition, otherwise the court shall immediately dismiss the petition; and
 - (2) Recite in detail the matters taken up in the initial hearing and the action taken thereon, including a substitute rehabilitation plan contemplated in Sections 5 (b)(7) and (8) of this Rule;

- (b) If the debtor and creditors agree on a new rehabilitation plan pursuant to Section 5 (b)(7) of this Rule, the order shall so state the fact and require the rehabilitation receiver to supply the details of the plan and submit it for the approval of the court not later than 60 days from the date of the last initial hearing. The court shall approve the new rehabilitation plan not later than 90 days from the date of the last initial hearing upon concurrence of the following:
- (1) Approval or endorsement of creditors holding at least two-thirds of the total liabilities of the debtor including secured creditors holding more than 50 percent of the total secured claims of the debtor and unsecured creditors holding more than 50 percent of the total unsecured claims of the debtor;
 - (2) The rehabilitation plan complies with the requirements specified in Section 18 of Rule 3;
 - (3) The rehabilitation plan would provide the objecting class of creditors with payments whose present value projected in the plan would be greater than that which they would have received if the assets of the debtor were sold by a liquidator within a six-month period from the date of filing of the petition; and
 - (4) The rehabilitation receiver has recommended approval of the plan.

The approval by the court of the new rehabilitation plan shall have the same effect as approval of a rehabilitation plan under Section 20 of Rule 3.

Sec. 8. Creditors' Meetings. – If no new rehabilitation plan is agreed upon by the debtor and the creditors, the rehabilitation receiver, at any time before he submits his evaluation on the debtor-proposed rehabilitation plan to the court as prescribed in Section 7(a)(1) of this Rule, shall, either alone or with the debtor, meet with the creditors or any interested party to discuss the plan with a view to clarifying or resolving any matter connected therewith.

Sec. 9. Comments on or Opposition to Rehabilitation Plan. – Any creditor or interested party of record may file comments on or opposition to the proposed rehabilitation plan, with a copy given to the rehabilitation receiver, not later than 60 days from the date of the last initial hearing. The court shall conduct summary and non-adversarial proceedings to receive evidence, if necessary, in hearing the comments on and opposition to the plan.

Sec. 10. Modification of Proposed Rehabilitation Plan. – The debtor may modify its rehabilitation plan in the light of the comments of the rehabilitation receiver and creditors or any interested party and submit a revised or substitute rehabilitation plan for the final approval of the court. Such rehabilitation plan must be submitted to the court not later than 10 months from the date of filing of the petition.

Sec. 11. *Approval of Rehabilitation Plan.* – The court may approve a rehabilitation plan even over the opposition of creditors of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The opposition of creditors is manifestly unreasonable if the following are present:

- (a) The rehabilitation plan complies with the requirements specified in Section 18 of Rule 3;
- (b) The rehabilitation plan would provide the objecting class of creditors with payments whose present value projected in the plan would be greater than that which they would have received if the assets of the debtor were sold by a liquidator within a six-month period from the date of filing of the petition; and
- (c) The rehabilitation receiver has recommended approval of the plan.

In approving the rehabilitation plan, the court shall ensure that the rights of the secured creditors are not impaired. The court shall also issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

Sec. 12. *Period to Decide Petition.* – The court shall decide the petition within one year from the date of filing of the petition, unless the court, for good cause shown, is able to secure an extension of the period from the Supreme Court.

RULE 5

CREDITOR-INITIATED REHABILITATION

SECTION 1. *Who May Petition.* – Any creditor or creditors holding at least 20 percent of the debtor’s total liabilities may file a petition with the proper regional trial court for rehabilitation of a debtor that cannot meet its debts as they respectively fall due.

Sec. 2. *Requirements for Creditor-Initiated Petitions.* – Where the petition is filed by a creditor or creditors under this Rule, it is sufficient that the petition is accompanied by a rehabilitation plan and a list of at least three nominees to the position of rehabilitation receiver and verified by a sworn statement that the affiant has read the petition and that its contents are true and correct of his personal knowledge or based on authentic records and that the petition is being filed to protect the interests of the debtor, the stockholders, the investors and the creditors of the debtor.

Sec. 3. *Applicability of Provisions Relating to Debtor-Initiated Rehabilitation.* – The provisions of Sections 5 to 12 of Rule 4 shall apply to rehabilitation under this Rule.

RULE 6 PRE-NEGOTIATED REHABILITATION

SECTION 1. *Pre-negotiated Rehabilitation Plan.* – A debtor that foresees the impossibility of meeting its debts as they fall due may, by itself or jointly with any of its creditors, file a verified petition for the approval of a pre-negotiated rehabilitation plan. The petition shall comply with Section 2 of Rule 4 and be supported by an affidavit showing the written approval or endorsement of creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50 percent of the total secured claims of the debtor and unsecured creditors holding more than 50 percent of the total unsecured claims of the debtor.

SEC. 2. *Issuance of Order.* – If the court finds the petition sufficient in form and substance, it shall, not later than five working days from the filing of the petition, issue an order which shall:

- (a) Identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) Direct the publication of the order in a newspaper of general circulation once a week for at least two consecutive weeks, with the first publication to be made within seven days from the time of its issuance;
- (c) Direct the service by personal delivery of a copy of the petition on each creditor who is not a petitioner holding at least 5 percent of the total liabilities of the debtor, as determined in the schedule attached to the petition, within three days;
- (d) Direct the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the relevant regulatory agency;
- (e) State that copies of the petition and the rehabilitation plan are available for examination and copying by any interested party;
- (f) Direct creditors and other parties interested (including the Securities and Exchange Commission and the relevant regulatory agencies such as, but not limited to, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission) in opposing the petition or rehabilitation plan to file their verified objections thereto or comments thereon within a period of not later than 20 days from the second publication of the order, with a warning that failure to do so will bar them from participating in the proceedings;
- (g) Appoint the rehabilitation receiver named in the plan, unless the court finds that he is not qualified under these Rules in which case it may appoint a qualified rehabilitation receiver of its choice;

- (h) Stay enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; *provided*, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided* further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; *provided*, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor;
- (i) Prohibit the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
- (j) Prohibit the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition;
- (k) Prohibit the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order;
- (l) Direct the payment in full of all administrative expenses incurred after the issuance of the stay order; and
- (m) Direct the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval.

Sec. 3. Approval of Plan. – Within 10 days from the date of the second publication of the order referred to in Section 2 of this Rule, the court shall approve the rehabilitation plan unless a creditor or other interested party submits a verified objection to it in accordance with the next succeeding section.

Sec. 4. Objection to Petition or Rehabilitation Plan. – Any creditor or other interested party may submit to the court a verified objection to the petition or the rehabilitation plan. The objection shall be limited to the following:

- (a) The petition or the rehabilitation plan or their attachments contain material omissions or are materially false or misleading;
- (b) The terms of rehabilitation are unattainable; or
- (c) The approval or endorsement of creditors required under Section 1 of this Rule has not been obtained.

Copies of any objection to the petition or the rehabilitation plan shall be served on the petitioning debtor and/or creditors.

Sec. 5. *Hearing on Objections.* – The court shall set the case for hearing not earlier than 10 days and no longer than 20 days from the date of the second publication of the order mentioned in Section 2 of this Rule on the objections to the petition or rehabilitation plan. If the court finds that the objection is in accordance with the immediately preceding section, it shall direct the petitioner to cure the defect within a period 15 days from receipt of the order.

Sec. 6. *Period for Approval of Rehabilitation Plan.* – The court shall decide the petition not later than 120 days from the date of the filing of the petition. If the court fails to do so within said period, the rehabilitation plan shall be deemed approved.

Sec. 7. *Effects of Approval of Rehabilitation Plan.* – Approval of the rehabilitation plan under this Rule shall have the same legal effect as approval of a rehabilitation plan under Section 20 of Rule 3.

Sec. 8. *Revocation of Approved Rehabilitation Plan.* – Not later than 30 days from the approval of a rehabilitation plan under this Rule, the plan may, upon motion and after notice and hearing, be revoked on the ground that the approval was secured by fraud or that the petitioner has failed to cure the defect ordered by the court pursuant to Section 5 of this Rule.

Sec. 9. *Effect of Rule on Pending Petitions.* – Any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules may be converted into a rehabilitation proceeding under this Rule.

RULE 7

RECOGNITION OF FOREIGN PROCEEDINGS

SECTION 1. *Scope of Application.* – This Rule applies where (a) assistance is sought in a Philippine court by a foreign court or a foreign representative in connection with a foreign proceeding; (b) assistance is sought in a foreign State in connection with a domestic proceeding governed by these Rules; or (c) a foreign proceeding and a domestic proceeding are concurrently taking place.

The sole fact that a petition is filed pursuant to this Rule does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the local courts for any purpose other than the petition.

Sec. 2. *Non-Recognition of Foreign Proceeding.* – Nothing in this Rule prevents the court from refusing to take an action governed by this Rule if (a) the action would be manifestly contrary to the public policy of the Philippines; and (b) if the court finds that the country of which the petitioner is a national does not grant recognition to a Philippine rehabilitation proceeding in a manner substantially in accordance with this Rule.

Sec. 3. *Petition for Recognition of Foreign Proceeding.* – A foreign representative may apply with the Regional Trial Court where the debtor resides for recognition of the foreign proceeding in which the foreign representative has been appointed.

A petition for recognition shall be accompanied by:

- (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) In the absence of evidence referred to in subparagraph (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

Sec. 4. *Recognition of Foreign Proceeding.* – A foreign proceeding shall be recognized if:

- (a) The proceeding is a foreign proceeding as defined herein;
- (b) The person or body applying for recognition is a foreign representative as defined herein; and
- (c) The petition meets the requirements of Section 3 of this Rule;

Sec. 5. *Period to Recognize Foreign Proceeding.* – A petition for recognition of a foreign proceeding shall be decided within 30 days from the filing thereof.

Sec. 6. *Notification to Court.* – From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

- (a) Any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and
- (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Sec. 7. *Provisional Relief that May be Granted upon Application for Recognition of Foreign Proceeding.* – From the time of filing a petition for recognition until the same is decided upon, the court may, upon motion of the foreign representative where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

- (a) Staying execution against the debtor's assets;
- (b) Entrusting the administration or realization of all or part of the debtor's assets located in the Philippines to the foreign representative or another person designated by the court in order to protect and preserve the value of assets

that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;

(c) Any relief mentioned in Sections 9(a)(1), (2) and (7) of this Rule.

SEC. 8. *Effects of Recognition of Foreign Proceeding.* – Upon recognition of a foreign proceeding:

- (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities is stayed; *provided*, that such stay does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (b) Execution against the debtor’s assets is stayed; and
- (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

SEC. 9. *Relief that May be Granted after Recognition of Foreign Proceeding.*

- (a) Upon recognition of a foreign proceeding, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, upon motion of the foreign representative, grant any appropriate relief including:
 - (1) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under Section 8(a) of this Rule;
 - (2) Staying execution against the debtor’s assets to the extent it has not been stayed under Section 8(b) of this Rule;
 - (3) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under Section 8(c) of this Rule;
 - (4) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;
 - (5) Entrusting the administration or realization of all or part of the debtor’s assets located in the Philippines to the foreign representative or another person designated by the court;
 - (6) Extending the relief granted under Section 7 of this Rule;
 - (7) Granting any additional relief that may be available to the rehabilitation receiver under these laws.
- (b) Upon recognition of a foreign proceeding, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the Philippines to the foreign representative or another person

designated by the court; *provided* that the court is satisfied that the interests of local creditors are adequately protected.

SEC. 10. *Protection of Creditors and Other Interested Persons.*

- (a) In granting or denying relief under this Rule or in modifying or terminating the relief under paragraph (c) of this Section, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (b) The court may subject the relief granted under Section 7 or Section 9 of this Rule to conditions it considers appropriate.
- (c) The court may, upon motion of the foreign representative or a person affected by the relief granted under Section 7 or Section 9 of this Rule, or on its own motion, modify or terminate such relief.

SEC. 11. *Actions to Avoid Acts Detrimental to Creditors.* – Upon recognition of a foreign proceeding, the foreign representative acquires the standing to initiate actions to avoid or otherwise render ineffective acts detrimental to creditors that are available under these Rules.

SEC. 12. *Intervention by Foreign Representative in Philippine Proceedings.* – Upon recognition of a foreign proceeding, the foreign representative may intervene in any action or proceeding in the Philippines in which the debtor is a party.

SEC. 13. *Cooperation and Direct Communication with Foreign Courts and Foreign Representatives.* – In matters covered by this Rule, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives.

The court is entitled to communicate directly with, or request information or assistance directly from, foreign courts or foreign representatives.

SEC. 14. *Forms of Cooperation.* – Cooperation may be implemented by any appropriate means, including but not limited to the following:

- (a) Appointment of a person or body to act at the discretion of the court;
- (b) Communication of information by any means considered appropriate by the court;
- (c) Coordination of the administration and supervision of the debtor's assets and affairs;
- (d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) Coordination of concurrent proceedings regarding the same debtor;

- (f) Suspension of proceedings against the debtor;
- (g) Limiting the relief of assets that should be administered in a foreign proceeding pending in a jurisdiction other than the place where the debtor has its principal place of business (foreign non-main proceeding) or information required in that proceeding; and
- (h) Implementation of rehabilitation or reorganization plan for the debtor.

Nothing in this Rule limits the power of the court to provide additional assistance to the foreign representative under other applicable laws.

SEC. 15. Commencement of Local Proceeding after Recognition of Foreign Proceeding. –

After the recognition of a foreign proceeding, a local proceeding under these Rules may be commenced only if the debtor is doing business in the Philippines, the effects of the proceedings shall be restricted to the assets of the debtor located in the country and, to the extent necessary to implement cooperation and coordination under Sections 13 and 14 of this Rule, to the other assets of the debtor that, under local laws, must be administered in that proceeding.

SEC. 16. Local and Foreign Proceedings. – Where a foreign proceeding and a local proceeding are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under Sections 13 and 14 of this Rule. Any relief granted to the foreign proceeding must be made consistent with the relief granted in the local proceeding.

RULE 8 PROCEDURAL REMEDIES

SECTION 1. Motion for Reconsideration. – A party may file a motion for reconsideration of any order issued by the court prior to the approval of the rehabilitation plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for *certiorari* under Rule 65 of the Rules of Court. Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or disapproving the rehabilitation plan.

An order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for *certiorari* under Rule 65 of the Rules of Court.

SEC. 2. Review of Decision or Order on Rehabilitation Plan. – An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for review to the Court of Appeals under Rule 43 of the Rules of Court within 15 days from notice of the decision or order.

RULE 9

FINAL PROVISIONS

SECTION 1. *Severability.* – If any provision or section of these Rules is held invalid, the other provisions or sections shall not be affected thereby.

SEC. 2. *Transitory Provision.* – Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules shall be governed by these Rules.

SEC. 3. *Effectivity.* – These Rules shall take effect on January 16, 2009 following its publication in two newspapers of general circulation in the Philippines.

ANNEX "A"
AFFIDAVIT OF GENERAL FINANCIAL CONDITION

- (1) Are you an officer of the debtor referred to in these proceedings?
- (2) What is your full name and what position do you hold in the debtor?
- (3) What is the full name of the debtor and what is the address of its head office?
- (4) When was it formed or incorporated?
- (5) When did the debtor commence business?
- (6) What is the nature of its business? What is the market share of the debtor in the industry in which it is engaged?
- (7) Who are the parties, members, or stockholders? How many employees?
- (8) What is the capital of the debtor?
- (9) What is the capital contribution and what is the amount of the capital, paid and unpaid, of each of the partners or shareholders?
- (10) Do any of these people hold the shares in trust for others?
- (11) Who are the directors and officers of the debtors?
- (12) Has the debtor any subsidiary corporation? If so, give particulars?
- (13) Has the debtor properly maintained its books and are they updated?
- (14) Were the books audited annually?
- (15) If so, what is the name of the auditor and when was the last audited statement drawn up?
- (16) Have all proper returns been made to the various government agencies requiring same?
- (17) When did the debtor first become aware of its problems?
- (18) Has the debtor within the 12 months preceding the filing of the petition:
 - (a) made any payments, returned any goods or delivered any property to any of its creditors, except in the normal course of business?
 - (b) executed any mortgage, pledge, or security over any of its properties in favor of any creditor?
 - (c) transferred or disposed of any of its properties in payment of any debt?
 - (d) sold, disposed of, or removed any of its property except in the ordinary course of business?

(e) sold any merchandise at less than fair market value or purchased merchandise or services at more than fair market value?

(f) made or been a party to any settlement of property in favor of any person?

If, so, give particulars.

- (19) Has the debtor recorded all sales or dispositions of assets?
- (20) What were the sales for the last three years and what percentage of the sales represented the profit or mark-up?
- (21) What were the profits or losses for the debtor for the last three years?
- (22) What are the causes of the problems of the debtor? Please provide particulars?
- (23) When did you first notice these problems and what actions did the debtor take to rectify them?
- (24) How much do you estimate is needed to rehabilitate the debtor?
- (25) Has any person expressed interest in investing new money into the debtor?
- (26) Are there any pending and threatened legal actions against the debtor? If so, please provide particulars.
- (27) Has the debtor discussed any restructuring or repayment plan with any of the creditors? Please provide status and details.
- (28) Has any creditor expressed interest in restructuring the debts of the debtor? If so, please give particulars.
- (29) Have employees' wages and salaries been kept current? If not, how much are in arrears and what time period do the arrears represent?
- (30) Have obligation to the government and its agencies been kept current? If not, how much are in arrears and what time period do the arrears represent?

REPUBLIC ACT NO. 10142
AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF
FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUAL
Approved on July 18, 2010

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I
GENERAL PROVISIONS

SECTION 1. Title. – This Act shall be known as the “Financial Rehabilitation and Insolvency Act (FRIA) of 2010.”

SEC. 2. Declaration of Policy. – It is the policy of the State to encourage debtors, both juridical and natural persons, and their creditors to collectively and realistically resolve and adjust competing claims and property rights. In furtherance thereof, the State shall ensure a timely, fair, transparent, effective and efficient rehabilitation or liquidation of debtors. The rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtors’ assets and the settlement of their obligations.

SEC. 3. Nature of Proceedings. – The proceedings under this Act shall be *in rem*. Jurisdiction over all persons affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines in the manner prescribed by the rules of procedure to be promulgated by the Supreme Court.

The proceedings shall be conducted in a summary and non-adversarial manner consistent with the declared policies of this Act and in accordance with the rules of procedure that the Supreme Court may promulgate.

SEC. 4. Definition of Terms. – As used in this Act, the term:

- (a) *Administrative expenses* shall refer to those reasonable and necessary expenses:
- (1) incurred or arising from the filing of a petition under the provisions of this Act;
 - (2) arising from, or in connection with, the conduct of the proceedings under this Act, including those incurred for the rehabilitation or liquidation of the debtor;

- (3) incurred in the ordinary course of business of the debtor after the commencement date;
 - (4) for the payment of new obligations obtained after the commencement date to finance the rehabilitation of the debtor;
 - (5) incurred for the fees of the rehabilitation receiver or liquidator and of the professionals engaged by them; and
 - (6) that are otherwise authorized or mandated under this Act or such other expenses as may be allowed by the Supreme Court in its rules.
- (b) *Affiliate* shall refer to a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation.
- (c) *Claim* shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided*, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities.
- (d) *Commencement date* shall refer to the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings.
- (e) *Commencement Order* shall refer to the order issued by the court under Section 16 of this Act.
- (f) *Control* shall refer to the power of a parent corporation to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries or affiliates, more than one-half of the voting power of an enterprise unless, in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half or less of the voting power of an enterprise when there is power:
- (1) over more than one-half of the voting rights by virtue of an agreement with investors;
 - (2) to direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
 - (3) to appoint or remove the majority of the members of the board of directors or equivalent governing body; or

- (4) to cast the majority votes at meetings of the board of directors or equivalent governing body.
- (g) *Court* shall refer to the court designated by the Supreme Court to hear and determine, at the first instance, the cases brought under this Act.
- (h) *Creditor* shall refer to a natural or juridical person which has a claim against the debtor that arose on or before the commencement date.
- (i) *Date of liquidation* shall refer to the date on which the court issues the Liquidation Order.
- (j) *Days* shall refer to calendar days unless otherwise specifically stated in this Act.
- (k) *Debtor* shall refer to, unless specifically excluded by a provision of this Act, a sole proprietorship duly registered with the Department of Trade and Industry (DTI), a partnership duly registered with the Securities and Exchange Commission (SEC), a corporation duly organized and existing under Philippine laws, or an individual debtor who has become insolvent as defined herein.
- (l) *Encumbered property* shall refer to real or personal property of the debtor upon which a lien attaches.
- (m) *General unsecured creditor* shall refer to a creditor whose claim or a portion thereof is neither secured, preferred nor subordinated under this Act.
- (n) *Group of debtors* shall refer to and can cover only:
 - (1) corporations that are financially related to one another as parent corporations, subsidiaries or affiliates;
 - (2) partnerships that are owned more than 50 percent by the same person; and
 - (3) single proprietorships that are owned by the same person.

When the petition covers a group of debtors, all reference under these rules to debtor shall include and apply to the group of debtors.

- (o) *Individual debtor* shall refer to a natural person who is a resident and citizen of the Philippines that has become insolvent as defined herein.
- (p) *Insolvent* shall refer to the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.
- (q) *Insolvent debtor's estate* shall refer to the estate of the insolvent debtor, which includes all the property and assets of the debtor as of commencement date, plus the property and assets acquired by the rehabilitation receiver or liquidator after that date, as well as all other property and assets in which the debtor has an ownership interest, whether or not these property and assets are in the debtor's possession as of commencement date: *Provided*, That trust assets and bailment,

and other property and assets of a third party that are in the possession of the debtor as of commencement date, are excluded therefrom.

- (r) *Involuntary proceedings* shall refer to proceedings initiated by creditors.
- (s) *Liabilities* shall refer to monetary claims against the debtor, including stockholder's advances that have been recorded in the debtor's audited financial statements as advances for future subscriptions.
- (t) *Lien* shall refer to a statutory or contractual claim or judicial charge on real or personal property that legally entitles a creditor to resort to said property for payment of the claim or debt secured by such lien.
- (u) *Liquidation* shall refer to the proceedings under Chapter V of this Act.
- (v) *Liquidation Order* shall refer to the Order issued by the court under Section 112 of this Act.
- (w) *Liquidator* shall refer to the natural person or juridical entity appointed as such by the court and entrusted with such powers and duties as set forth in this Act: *Provided*, That, if the liquidator is a juridical entity, it must designate a natural person who possesses all the qualifications and none of the disqualifications as its representative, it being understood that the juridical entity and the representative are solidarily liable for all obligations and responsibilities of the liquidator.
- (x) *Officer* shall refer to a natural person holding a management position described in or contemplated by a juridical entity's articles of incorporation, bylaws or equivalent documents, except for the corporate secretary, the assistant corporate secretary and the external auditor.
- (y) *Ordinary course of business* shall refer to transactions in the pursuit of the individual debtor's or debtor's business operations prior to rehabilitation or insolvency proceedings and on ordinary business terms.
- (z) *Ownership interest* shall refer to the ownership interest of third parties in property held by the debtor, including those covered by trust receipts or assignments of receivables.
- (aa) *Parent* shall refer to a corporation which has control over another corporation either directly or indirectly through one or more intermediaries.
- (bb) *Party to the proceedings* shall refer to the debtor, a creditor, the unsecured creditors' committee, a stakeholder, a party with an ownership interest in property held by the debtor, a secured creditor, the rehabilitation receiver, liquidator or any other juridical or natural person who stands to be benefited or injured by the outcome of the proceedings and whose notice of appearance is accepted by the court.

- (cc) *Possessory lien* shall refer to a lien on property, the possession of which has been transferred to a creditor or a representative or agent thereof.
- (dd) *Proceedings* shall refer to judicial proceedings commenced by the court's acceptance of a petition filed under this Act.
- (ee) *Property of others* shall refer to property held by the debtor in which other persons have an ownership interest.
- (ff) *Publication notice* shall refer to notice through publication in a newspaper of general circulation in the Philippines on a business day for two consecutive weeks.
- (gg) *Rehabilitation* shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.
- (hh) *Rehabilitation receiver* shall refer to the person or persons, natural or juridical, appointed as such by the court pursuant to this Act and which shall be entrusted with such powers and duties as set forth herein.
- (ii) *Rehabilitation Plan* shall refer to a plan by which the financial well-being and viability of an insolvent debtor can be restored using various means including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of new business entity as prescribed in Section 62 hereof, or other similar arrangements as may be approved by the court or creditors.
- (jj) *Secured claim* shall refer to a claim that is secured by a lien.
- (kk) *Secured creditor* shall refer to a creditor with a secured claim.
- (ll) *Secured party* shall refer to a secured creditor or the agent or representative of such secured creditor.
- (mm) *Securities market participant* shall refer to a broker, dealer, underwriter, transfer agent or other juridical persons transacting securities in the capital market.
- (nn) *Stakeholder* shall refer, in addition to a holder of shares of a corporation, to a member of a nonstock corporation or association or a partner in a partnership.
- (oo) *Subsidiary* shall refer to a corporation more than 50 percent of the voting stock of which is owned or controlled directly or indirectly through one or more intermediaries by another corporation, which thereby becomes its parent corporation.
- (pp) *Unsecured claim* shall refer to a claim that is not secured by a lien.
- (qq) *Unsecured creditor* shall refer to a creditor with an unsecured claim.

- (rr) *Voluntary proceedings* shall refer to proceedings initiated by the debtor.
- (ss) *Voting creditor* shall refer to a creditor that is a member of a class of creditors, the consent of which is necessary for the approval of a Rehabilitation Plan under this Act.

Sec. 5. Exclusions. – The term debtor does not include banks, insurance companies, pre-need companies, and national and local government agencies or units.

For purposes of this section:

- (a) *Bank* shall refer to any duly licensed bank or quasi-bank that is potentially or actually subject to conservatorship, receivership or liquidation proceedings under the New Central Bank Act (Republic Act No. 7653) or successor legislation;
- (b) *Insurance company* shall refer to those companies that are potentially or actually subject to insolvency proceedings under the Insurance Code (Presidential Decree No. 1460) or successor legislation; and
- (c) *Pre-need company* shall refer to any corporation authorized/licensed to sell or offer to sell pre-need plans.

Provided, That government financial institutions other than banks and government-owned or controlled corporations shall be covered by this Act, unless their specific charter provides otherwise.

Sec. 6. Designation of Courts and Promulgation of Procedural Rules. – The Supreme Court shall designate the court or courts that will hear and resolve cases brought under this Act and shall promulgate the rules of pleading, practice and procedure to govern the proceedings brought under this Act.

Sec. 7. Substantive and Procedural Consolidation. – Each juridical entity shall be considered as a separate entity under the proceedings in this Act. Under these proceedings, the assets and liabilities of a debtor may not be commingled or aggregated with those of another, unless the latter is a related enterprise that is owned or controlled directly or indirectly by the same interests: *Provided, however*, that the commingling or aggregation of assets and liabilities of the debtor with those of a related enterprise may only be allowed where:

- (a) there was commingling in fact of assets and liabilities of the debtor and the related enterprise prior to the commencement of the proceedings;
- (b) the debtor and the related enterprise have common creditors and it will be more convenient to treat them together rather than separately;
- (c) the related enterprise voluntarily accedes to join the debtor as party petitioner and to commingle its assets and liabilities with the debtor's; and

- (d) the consolidation of assets and liabilities of the debtor and the related enterprise is beneficial to all concerned and promotes the objectives of rehabilitation.

Provided, finally, That nothing in this section shall prevent the court from joining other entities affiliated with the debtor as parties pursuant to the rules of procedure as may be promulgated by the Supreme Court.

SEC. 8. Decisions of Creditors. – Decisions of creditors shall be made according to the relevant provisions of the Corporation Code in the case of stock or nonstock corporations or the Civil Code in the case of partnerships that are not inconsistent with this Act.

SEC. 9. Creditors' Representatives. – Creditors may designate representatives to vote or otherwise act on their behalf by filing notice of such representation with the court and serving a copy on the rehabilitation receiver or liquidator.

SEC. 10. Liability of Individual Debtor, Owner of a Sole Proprietorship, Partners in a Partnership, or Directors and Officers. – Individual debtor, owner of a sole proprietorship, partners in a partnership, or directors and officers of a debtor shall be liable for double the value of the property sold, embezzled or disposed of or double the amount of the transaction involved, whichever is higher, to be recovered for the benefit of the debtor and the creditors, if they, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully commit the following acts:

- (a) Dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors;
or
- (b) Conceal, or authorize or approve the concealment, from the creditors, or embezzle or misappropriate, any property of the debtor.

The court shall determine the extent of the liability of an owner, partner, director or officer under this section. In this connection, in case of partnerships and corporations, the court shall consider the amount of the shareholding or partnership or equity interest of such partner, director or officer, the degree of control of such partner, director or officer over the debtor, and the extent of the involvement of such partner, director or debtor in the actual management of the operations of the debtor.

SEC. 11. Authorization to Exchange Debt for Equity. – Notwithstanding applicable banking legislation to the contrary, any bank, whether universal or not, may acquire and hold an equity interest or investment in a debtor or its subsidiaries when conveyed to such bank in satisfaction of debts pursuant to a Rehabilitation or Liquidation Plan approved by the court: *Provided,* That such ownership shall be subject to the ownership limits

applicable to universal banks for equity investments and: *Provided, further*, That any equity investment or interest acquired or held pursuant to this section shall be disposed by the bank within a period of five years or as may be prescribed by the Monetary Board.

CHAPTER II COURT-SUPERVISED REHABILITATION

(A) Initiation Proceedings.

(1) *Voluntary Proceedings.*

SECTION 12. *Petition to Initiate Voluntary Proceedings by Debtor.* – When approved by the owner in case of a sole proprietorship, or by a majority of the partners in case of a partnership, or, in case of a corporation, by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock, or in case of nonstock corporation, by the vote of at least two-thirds of the members, in a stockholder’s or member’s meeting duly called for the purpose, an insolvent debtor may initiate voluntary proceedings under this Act by filing a petition for rehabilitation with the court and on the grounds hereinafter specifically provided. The petition shall be verified to establish the insolvency of the debtor and the viability of its rehabilitation, and include, whether as an attachment or as part of the body of the petition, as a minimum, the following:

- (a) Identification of the debtor, its principal activities and its addresses;
- (b) Statement of the fact of and the cause of the debtor’s insolvency or inability to pay its obligations as they become due;
- (c) The specific relief sought pursuant to this Act;
- (d) The grounds upon which the petition is based;
- (e) Other information that may be required under this Act depending on the form of relief requested;
- (f) Schedule of the debtor’s debts and liabilities including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any;
- (g) An inventory of all its assets including receivables and claims against third parties;
- (h) A Rehabilitation Plan;
- (i) The names of at least three nominees to the position of rehabilitation receiver; and

- (j) Other documents required to be filed with the petition pursuant to this Act and the rules of procedure as may be promulgated by the Supreme Court.

A group of debtors may jointly file a petition for rehabilitation under this Act when one or more of its members foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other members of the group and/or the participation of the other members of the group is essential under the terms and conditions of the proposed Rehabilitation Plan.

(2) Involuntary Proceedings.

Sec. 13. *Circumstances Necessary to Initiate Involuntary Proceedings.* – Any creditor or group of creditors with a claim, or of the aggregate of whose claims is, at least One Million Pesos (P1 million) or at least 25 percent of the subscribed capital stock or partners' contributions, whichever is higher, may initiate involuntary proceedings against the debtor by filing a petition for rehabilitation with the court if:

- (a) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least 60 days or that the debtor has failed generally to meet its liabilities as they fall due; or
- (b) a creditor, other than the petitioner/s, has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.

Sec. 14. *Petition to Initiate Involuntary Proceedings.* – The creditor/s' petition for rehabilitation shall be verified to establish the substantial likelihood that the debtor may be rehabilitated, and include:

- (a) identification of the debtor, its principal activities and its address;
- (b) the circumstances sufficient to support a petition to initiate involuntary rehabilitation proceedings under Section 13 of this Act;
- (c) the specific relief sought under this Act;
- (d) a Rehabilitation Plan;
- (e) the names of at least three nominees to the position of rehabilitation receiver;
- (f) other information that may be required under this Act depending on the form of relief requested; and
- (g) other documents required to be filed with the petition pursuant to this Act and the rules of procedure as may be promulgated by the Supreme Court.

(B) Action on the Petition and Commencement of Proceedings.

SECTION 15. *Action on the Petition.* – If the court finds the petition for rehabilitation to be sufficient in form and substance, it shall within five working days from the filing of the petition, issue a Commencement Order. If, within the same period, the court finds the petition deficient in form or substance, the court may, in its discretion, give the petitioner/s a reasonable period of time within which to amend or supplement the petition, or to submit such documents as may be necessary or proper to put the petition in proper order. In such case, the five working days provided above for the issuance of the Commencement Order shall be reckoned from the date of the filing of the amended or supplemental petition or the submission of such documents.

Sec. 16. *Commencement of Proceedings and Issuance of a Commencement Order.* – The rehabilitation proceedings shall commence upon the issuance of the Commencement Order, which shall:

- (a) identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) summarize the ground/s for initiating the proceedings;
- (c) state the relief sought under this Act and any requirement or procedure particular to the relief sought;
- (d) state the legal effects of the Commencement Order, including those mentioned in Section 17 hereof;
- (e) declare that the debtor is under rehabilitation;
- (f) direct the publication of the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two consecutive weeks, with the first publication to be made within seven days from the time of its issuance;
- (g) if the petitioner is the debtor, direct the service by personal delivery of a copy of the petition on each creditor holding at least 10 percent of the total liabilities of the debtor as determined from the schedule attached to the petition within five days; if the petitioner/s is/are creditor/s, direct the service by personal delivery of a copy of the petition on the debtor within five days;
- (h) appoint a rehabilitation receiver who may or may not be from among the nominees of the petitioner/s, and who shall exercise such powers and duties defined in this Act as well as the procedural rules that the Supreme Court will promulgate;
- (i) summarize the requirements and deadlines for creditors to establish their claims against the debtor and direct all creditors to file their claims with the court at least five days before the initial hearing;

- (j) direct the Bureau of Internal Revenue (BIR) to file and serve on the debtor its comment on or opposition to the petition or its claim/s against the debtor under such procedures as the Supreme Court may hereafter provide;
- (k) prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after the issuance of the Commencement Order;
- (l) authorize the payment of administrative expenses as they become due;
- (m) set the case for initial hearing, which shall not be more than 40 days from the date of filing of the petition for the purpose of determining whether there is substantial likelihood for the debtor to be rehabilitated;
- (n) make available copies of the petition and rehabilitation plan for examination and copying by any interested party;
- (o) indicate the location or locations at which documents regarding the debtor and the proceedings under this Act may be reviewed and copied;
- (p) state that any creditor or debtor, who is not the petitioner, may submit the name or nominate any other qualified person to the position of rehabilitation receiver at least five days before the initial hearing;
- (q) include a Stay or Suspension Order which shall:
 - (1) suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
 - (2) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - (3) prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - (4) prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

Sec. 17. *Effects of the Commencement Order.* – Unless otherwise provided for in this Act, the court's issuance of a Commencement Order shall, in addition to the effects of a Stay or Suspension Order described in Section 16 hereof:

- (a) vest the rehabilitation receiver with all the powers and functions provided for in this Act, such as the right to review and obtain all records to which the debtor's management and directors have access, including bank accounts of whatever nature of the debtor, subject to the approval by the court of the performance bond filed by the rehabilitation receiver;

- (b) prohibit, or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed in this Act, subject to the provisions of Section 50 hereof;
- (c) serve as the legal basis for rendering null and void any setoff after the commencement date of any debt owed to the debtor by any of the debtor's creditors;
- (d) serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date; and
- (e) consolidate the resolution of all legal proceedings by and against the debtor to the court: *Provided, however,* That the court may allow the continuation of cases in other courts where the debtor had initiated the suit.

Attempts to seek legal or other recourse against the debtor outside these proceedings shall be sufficient to support a finding of indirect contempt of court.

Sec. 18. *Exceptions to the Stay or Suspension Order.* – The Stay or Suspension Order shall not apply:

- (a) to cases already pending appeal in the Supreme Court as of commencement date: *Provided,* That any final and executory judgment arising from such appeal shall be referred to the court for appropriate action;
- (b) subject to the discretion of the court, to cases pending or filed at a specialized court or quasi-judicial agency which, upon determination by the court, is capable of resolving the claim more quickly, fairly and efficiently than the court: *Provided,* That any final and executory judgment of such court or agency shall be referred to the court and shall be treated as a non-disputed claim;
- (c) to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;
- (d) to any form of action of customers or clients of a securities market participant to recover or otherwise claim moneys and securities entrusted to the latter in the ordinary course of the latter's business as well as any action of such securities market participant or the appropriate regulatory agency or self-regulatory organization to pay or settle such claims or liabilities;
- (e) to the actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement for the settlement

of securities transactions in accordance with the provisions of the Securities Regulation Code and its implementing rules and regulations;

- (f) the clearing and settlement of financial transactions through the facilities of a clearing agency or similar entities duly authorized, registered and/or recognized by the appropriate regulatory agency like the Bangko Sentral ng Pilipinas (BSP) and the SEC as well as any form of actions of such agencies or entities to reimburse themselves for any transactions settled for the debtor; and
- (g) any criminal action against the individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act.

Sec. 19. Waiver of Taxes and Fees Due to the National Government and to Local Government Units (LGUs). – Upon issuance of the Commencement Order by the court, and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to LGUs shall be considered waived, in furtherance of the objectives of rehabilitation.

Sec. 20. Application of Stay or Suspension Order to Government Financial Institutions. – The provisions of this Act concerning the effects of the Commencement Order and the Stay or Suspension Order on the suspension of rights to foreclose or otherwise pursue legal remedies shall apply to government financial institutions, notwithstanding provisions in their charters or other laws to the contrary.

Sec. 21. Effectivity and Duration of Commencement Order. – Unless lifted by the court, the Commencement Order shall be effective for the duration of the rehabilitation proceedings for as long as there is a substantial likelihood that the debtor will be successfully rehabilitated. In determining whether there is substantial likelihood for the debtor to be successfully rehabilitated, the court shall ensure that the following minimum requirements are met:

- (a) The proposed Rehabilitation Plan submitted complies with the minimum contents prescribed by this Act;
- (b) There is sufficient monitoring by the rehabilitation receiver of the debtor's business for the protection of creditors;
- (c) The debtor has met with its creditors to the extent reasonably possible in attempts to reach a consensus on the proposed Rehabilitation Plan;
- (d) The rehabilitation receiver submits a report, based on preliminary evaluation, stating that the underlying assumptions and the financial goals stated in the petitioner's Rehabilitation Plan are realistic, feasible and reasonable; or, if not, there is, in any case, a substantial likelihood for the debtor to be successfully rehabilitated because, among others:

- (1) there are sufficient assets with which to rehabilitate the debtor;
 - (2) there is sufficient cash flow to maintain the operations of the debtor;
 - (3) the debtor's owner/s, partners, stockholders, directors and officers have been acting in good faith and with due diligence;
 - (4) the petition is not a sham filing intended only to delay the enforcement of the rights of the creditor/s or of any group of creditors; and
 - (5) the debtor would likely be able to pursue a viable Rehabilitation Plan;
- (e) The petition, the Rehabilitation Plan and the attachments thereto do not contain any materially false or misleading statement;
- (f) If the petitioner is the debtor, that the debtor has met with its creditor/s representing at least three-fourths of its total obligations to the extent reasonably possible and made a good faith effort to reach a consensus on the proposed Rehabilitation Plan; if the petitioner/s is/are a creditor or group of creditors, that the petitioner/s has/have met with the debtor and made a good faith effort to reach a consensus on the proposed Rehabilitation Plan; and
- (g) The debtor has not committed acts of misrepresentation or in fraud of its creditor/s or a group of creditors.

Sec. 22. Action at the Initial Hearing. – At the initial hearing, the court shall:

- (a) determine the creditors who have made timely and proper filing of their notice of claims;
- (b) hear and determine any objection to the qualifications or the appointment of the rehabilitation receiver and, if necessary, appoint a new one in accordance with this Act;
- (c) direct the creditors to comment on the petition and the Rehabilitation Plan, and to submit the same to the court and to the rehabilitation receiver within a period of not more than 20 days; and
- (d) direct the rehabilitation receiver to evaluate the financial condition of the debtor and to prepare and submit to the court within 40 days from the initial hearing the report provided in Section 24 hereof.

Sec. 23. Effect of Failure to File Notice of Claim. – A creditor whose claim is not listed in the schedule of debts and liabilities and who fails to file a notice of claim in accordance with the Commencement Order but subsequently files a belated claim shall not be entitled to participate in the rehabilitation proceedings but shall be entitled to receive distributions arising therefrom.

Sec. 24. Report of the Rehabilitation Receiver. – Within 40 days from the initial hearing, and with or without the comments of the creditors or any of them, the rehabilitation receiver shall submit a report to the court stating his preliminary findings and recommendations on whether:

- (a) the debtor is insolvent and if so, the causes thereof and any unlawful or irregular act or acts committed by the owner/s of a sole proprietorship, partners of a partnership, or directors or officers of a corporation in contemplation of the insolvency of the debtor or which may have contributed to the insolvency of the debtor;
- (b) the underlying assumptions, the financial goals and the procedures to accomplish such goals as stated in the petitioner’s Rehabilitation Plan are realistic, feasible and reasonable;
- (c) there is a substantial likelihood for the debtor to be successfully rehabilitated;
- (d) the petition should be dismissed; and
- (e) the debtor should be dissolved and/or liquidated.

Sec. 25. Giving Due Course to or Dismissal of Petition, or Conversion of Proceedings. – Within 10 days from receipt of the report of the rehabilitation receiver mentioned in Section 24 hereof, the court may:

- (a) give due course to the petition upon a finding that:
 - (1) the debtor is insolvent; and
 - (2) there is a substantial likelihood for the debtor to be successfully rehabilitated;
- (b) dismiss the petition upon a finding that:
 - (1) debtor is not insolvent;
 - (2) the petition is a sham filing intended only to delay the enforcement of the rights of the creditor/s or of any group of creditors;
 - (3) the petition, the Rehabilitation Plan and the attachments thereto contain any materially false or misleading statements; or
 - (4) the debtor has committed acts of misrepresentation or in fraud of its creditor/s or a group of creditors;
- (c) convert the proceedings into one for the liquidation of the debtor upon a finding that:
 - (1) the debtor is insolvent; and
 - (2) there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the rules to be promulgated by the Supreme Court.

Sec. 26. *Petition Given Due Course.* – If the petition is given due course, the court shall direct the rehabilitation receiver to review, revise and/or recommend action on the Rehabilitation Plan and submit the same or a new one to the court within a period of not more than 90 days.

The court may refer any dispute relating to the Rehabilitation Plan or the rehabilitation proceedings pending before it to arbitration or other modes of dispute resolution, as provided for under Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004, should it determine that such mode will resolve the dispute more quickly, fairly and efficiently than the court.

Sec. 27. *Dismissal of Petition.* – If the petition is dismissed pursuant to paragraph (b) of Section 25 hereof, then the court may, in its discretion, order the petitioner to pay damages to any creditor or to the debtor, as the case may be, who may have been injured by the filing of the petition, to the extent of any such injury.

(C) The Rehabilitation Receiver, Management Committee and Creditors' Committee.

SECTION 28. *Who May Serve as a Rehabilitation Receiver.* – Any qualified natural or juridical person may serve as a rehabilitation receiver: *Provided*, That if the rehabilitation receiver is a juridical entity, it must designate a natural person/s who possess/es all the qualifications and none of the disqualifications as its representative, it being understood that the juridical entity and the representative/s are solidarily liable for all obligations and responsibilities of the rehabilitation receiver.

Sec. 29. *Qualifications of a Rehabilitation Receiver.* – The rehabilitation receiver shall have the following minimum qualifications:

- (a) A citizen of the Philippines or a resident of the Philippines in the six months immediately preceding his nomination;
- (b) Of good moral character and with acknowledged integrity, impartiality and independence;
- (c) Has the requisite knowledge of insolvency and other relevant commercial laws, rules and procedures, as well as the relevant training and/or experience that may be necessary to enable him to properly discharge the duties and obligations of a rehabilitation receiver; and
- (d) Has no conflict of interest: *Provided*, That such conflict of interest may be waived, expressly or impliedly, by a party who may be prejudiced thereby.

Other qualifications and disqualifications of the rehabilitation receiver shall be set forth in procedural rules, taking into consideration the nature of the business of the debtor and the need to protect the interest of all stakeholders concerned.

Sec. 30. *Initial Appointment of the Rehabilitation Receiver.* – The court shall initially appoint the rehabilitation receiver, who may or may not be from among the nominees of the petitioner. However, at the initial hearing of the petition, the creditors and the debtor who are not petitioners may nominate other persons to the position. The court may retain the rehabilitation receiver initially appointed or appoint another who may or may not be from among those nominated.

In case the debtor is a securities market participant, the court shall give priority to the nominee of the appropriate securities or investor protection fund.

If a qualified natural person or entity is nominated by more than 50 percent of the secured creditors and the general unsecured creditors, and satisfactory evidence is submitted, the court shall appoint the creditors' nominee as rehabilitation receiver.

Sec. 31. *Powers, Duties and Responsibilities of the Rehabilitation Receiver.* – The rehabilitation receiver shall be deemed an officer of the court with the principal duty of preserving and maximizing the value of the assets of the debtor during the rehabilitation proceedings, determining the viability of the rehabilitation of the debtor, preparing and recommending a Rehabilitation Plan to the court, and implementing the approved Rehabilitation Plan. To this end, and without limiting the generality of the foregoing, the rehabilitation receiver shall have the following powers, duties and responsibilities:

- (a) To verify the accuracy of the factual allegations in the petition and its annexes;
- (b) To verify and correct, if necessary, the inventory of all of the assets of the debtor, and their valuation;
- (c) To verify and correct, if necessary, the schedule of debts and liabilities of the debtor;
- (d) To evaluate the validity, genuineness and true amount of all the claims against the debtor;
- (e) To take possession, custody and control, and to preserve the value of all the property of the debtor;
- (f) To sue and recover, with the approval of the court, all amounts owed to, and all properties pertaining to the debtor;
- (g) To have access to all information necessary, proper or relevant to the operations and business of the debtor and for its rehabilitation;
- (h) To sue and recover, with the approval of the court, all property or money of the debtor paid, transferred or disbursed in fraud of the debtor or its creditors, or which constitute undue preference of creditor/s;
- (i) To monitor the operations and the business of the debtor to ensure that no payments or transfers of property are made other than in the ordinary course of business;

- (j) With the court's approval, to engage the services of or to employ persons or entities to assist him in the discharge of his functions;
- (k) To determine the manner by which the debtor may be best rehabilitated, to review, revise and/or recommend action on the Rehabilitation Plan and submit the same or a new one to the court for approval;
- (l) To implement the Rehabilitation Plan as approved by the court, if so provided under the Rehabilitation Plan;
- (m) To assume and exercise the powers of management of the debtor, if directed by the court pursuant to Section 36 hereof;
- (n) To exercise such other powers as may, from time to time, be conferred upon him by the court; and
- (o) To submit a status report on the rehabilitation proceedings every quarter or as may be required by the court *motu proprio*, or upon motion of any creditor or as may be provided, in the Rehabilitation Plan.

Unless appointed by the court, pursuant to Section 36 hereof, the rehabilitation receiver shall not take over the management and control of the debtor but may recommend the appointment of a management committee over the debtor in the cases provided by this Act.

SEC. 32. Removal of the Rehabilitation Receiver. – The rehabilitation receiver may be removed at any time by the court, either *motu proprio* or upon motion by any creditor/s holding more than 50 percent of the total obligations of the debtor, on such grounds as the rules of procedure may provide which shall include, but are not limited to, the following:

- (a) Incompetence, gross negligence, failure to perform or failure to exercise the proper degree of care in the performance of his duties and powers;
- (b) Lack of a particular or specialized competency required by the specific case;
- (c) Illegal acts or conduct in the performance of his duties and powers;
- (d) Lack of qualification or presence of any disqualification;
- (e) Conflict of interest that arises after his appointment; and
- (f) Manifest lack of independence that is detrimental to the general body of the stakeholders.

SEC. 33. Compensation and Terms of Service. – The rehabilitation receiver and his direct employees or independent contractors shall be entitled to compensation for reasonable fees and expenses from the debtor according to the terms approved by the court after notice and hearing. Prior to such hearing, the rehabilitation receiver and his direct employees shall be entitled to reasonable compensation based on *quantum meruit*. Such costs shall be considered administrative expenses.

Sec. 34. Oath and Bond of the Rehabilitation Receiver. – Prior to entering upon his powers, duties and responsibilities, the rehabilitation receiver shall take an oath and file a bond, in such amount to be fixed by the court, conditioned upon the faithful and proper discharge of his powers, duties and responsibilities.

Sec. 35. Vacancy. – In case the position of rehabilitation receiver is vacated for any reason whatsoever, the court shall direct the debtor and the creditors to submit the name/s of their nominee/s to the position. The court may appoint any of the qualified nominees, or any other person qualified for the position.

Sec. 36. Displacement of Existing Management by the Rehabilitation Receiver or Management Committee. – Upon motion of any interested party, the court may appoint and direct the rehabilitation receiver to assume the powers of management of the debtor, or appoint a management committee that will undertake the management of the debtor, upon clear and convincing evidence of any of the following circumstances:

- (a) Actual or imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or other properties;
- (b) Paralyzation of the business operations of the debtor; or
- (c) Gross mismanagement of the debtor, or fraud or other wrongful conduct on the part of, or gross or willful violation of this Act by, existing management of the debtor or the owner, partner, director, officer or representative/s in management of the debtor.

In case the court appoints the rehabilitation receiver to assume the powers of management of the debtor, the court may:

- (1) require the rehabilitation receiver to post an additional bond;
- (2) authorize him to engage the services or to employ persons or entities to assist him in the discharge of his managerial functions; and
- (3) authorize a commensurate increase in his compensation.

Sec. 37. Role of the Management Committee. – When appointed pursuant to the foregoing section, the management committee shall take the place of the management and the governing body of the debtor and assume their rights and responsibilities.

The specific powers and duties of the management committee, whose members shall be considered as officers of the court, shall be prescribed by the procedural rules.

Sec. 38. Qualifications of Members of the Management Committee. – The qualifications and disqualifications of the members of the management committee shall be set forth in the procedural rules, taking into consideration the nature of the business of the debtor and the need to protect the interest of all stakeholders concerned.

Sec. 39. *Employment of Professionals.* – Upon approval of the court, and after notice and hearing, the rehabilitation receiver or the management committee may employ specialized professionals and other experts to assist each in the performance of their duties. Such professionals and other experts shall be considered either employees or independent contractors of the rehabilitation receiver or the management committee, as the case may be. The qualifications and disqualifications of the professionals and experts may be set forth in procedural rules, taking into consideration the nature of the business of the debtor and the need to protect the interest of all stakeholders concerned.

Sec. 40. *Conflict of Interest.* – No person may be appointed as a rehabilitation receiver, member of a management committee, or be employed by the rehabilitation receiver or the management committee if he has a conflict of interest.

An individual shall be deemed to have a conflict of interest if he is so situated as to be materially influenced in the exercise of his judgment for or against any party to the proceedings. Without limiting the generality of the foregoing, an individual shall be deemed to have a conflict of interest if:

- (a) he is a creditor, owner, partner or stockholder of the debtor;
- (b) he is engaged in a line of business which competes with that of the debtor;
- (c) he is, or was, within five years from the filing of the petition, a director, officer, owner, partner or employee of the debtor or any of the creditors, or the auditor or accountant of the debtor;
- (d) he is, or was, within two years from the filing of the petition, an underwriter of the outstanding securities of the debtor;
- (e) he is related by consanguinity or affinity within the fourth civil degree to any individual creditor, owner/s of a sole proprietorship-debtor, partners of a partnership-debtor or to any stockholder, director, officer, employee or underwriter of a corporation-debtor; or
- (f) he has any other direct or indirect material interest in the debtor or any of the creditors.

Any rehabilitation receiver, member of the management committee or persons employed or contracted by them possessing any conflict of interest shall make the appropriate disclosure either to the court or to the creditors in case of out-of-court rehabilitation proceedings. Any party to the proceeding adversely affected by the appointment of any person with a conflict of interest to any of the positions enumerated above may however waive his right to object to such appointment and, if the waiver is unreasonably withheld, the court may disregard the conflict of interest, taking into account the general interest of the stakeholders.

Sec. 41. Immunity. – The rehabilitation receiver and all persons employed by him, and the members of the management committee and all persons employed by it, shall not be subject to any action, claim or demand in connection with any act done or omitted to be done by them in good faith in connection with the exercise of their powers and functions under this Act or other actions duly approved by the court.

Sec. 42. Creditors' Committee. – After the creditors' meeting called pursuant to Section 63 hereof, the creditors belonging to a class may formally organize a committee among themselves. In addition, the creditors may, as a body, agree to form a creditors' committee composed of a representative from each class of creditors, such as the following:

- (a) Secured creditors;
- (b) Unsecured creditors;
- (c) Trade creditors and suppliers; and
- (d) Employees of the debtor.

In the election of the creditors' representatives, the rehabilitation receiver or his representative shall attend such meeting and extend the appropriate assistance as may be defined in the procedural rules.

Sec. 43. Role of Creditors' Committee. – The creditors' committee when constituted pursuant to Section 42 of this Act shall assist the rehabilitation receiver in communicating with the creditors and shall be the primary liaison between the rehabilitation receiver and the creditors. The creditors' committee cannot exercise or waive any right or give any consent on behalf of any creditor unless specifically authorized in writing by such creditor. The creditors' committee may be authorized by the court or by the rehabilitation receiver to perform such other tasks and functions as may be defined by the procedural rules in order to facilitate the rehabilitation process.

(D) Determination of Claims.

SECTION 44. Registry of Claims. – Within 20 days from his assumption into office, the rehabilitation receiver shall establish a preliminary registry of claims. The rehabilitation receiver shall make the registry available for public inspection and provide publication notice to the debtor, creditors and stakeholders on where and when they may inspect it. All claims included in the registry of claims must be duly supported by sufficient evidence.

Sec. 45. Opposition or Challenge of Claims. – Within 30 days from the expiration of the period stated in the immediately preceding section, the debtor, creditors, stakeholders and other interested parties may submit a challenge to claim/s to the court, serving a certified copy on the rehabilitation receiver and the creditor holding the challenged claim/s. Upon the expiration of the 30-day period, the rehabilitation receiver shall

submit to the court the registry of claims which shall include undisputed claims that have not been subject to challenge.

Sec. 46. Appeal. – Any decision of the rehabilitation receiver regarding a claim may be appealed to the court.

(E) Governance.

SECTION 47. Management. – Unless otherwise provided herein, the management of the juridical debtor shall remain with the existing management subject to the applicable law/s and agreement/s, if any, on the election or appointment of directors, managers or managing partner. However, all disbursements, payments or sale, disposal, assignment, transfer or encumbrance of property, or any other act affecting title or interest in property, shall be subject to the approval of the rehabilitation receiver and/or the court, as provided in the following subchapter.

(F) Use, Preservation and Disposal of Assets and Treatment of Assets and Claims after Commencement Date.

SECTION 48. Use or Disposition of Assets. – Except as otherwise provided herein, no funds or property of the debtor shall be used or disposed of except in the ordinary course of business of the debtor, or unless necessary to finance the administrative expenses of the rehabilitation proceedings.

Sec. 49. Sale of Assets. – The court, upon application of the rehabilitation receiver, may authorize the sale of unencumbered property of the debtor outside the ordinary course of business upon a showing that the property, by its nature or because of other circumstance, is perishable, costly to maintain, susceptible to devaluation or otherwise in jeopardy.

Sec. 50. Sale or Disposal of Encumbered Property of the Debtor and Assets of Third Parties Held by Debtor. – The court may authorize the sale, transfer, conveyance or disposal of encumbered property of the debtor, or property of others held by the debtor where there is a security interest pertaining to third parties under a financial, credit or other similar transactions if, upon application of the rehabilitation receiver and with the consent of the affected owners of the property, or secured creditor/s in the case of encumbered property of the debtor and, after notice and hearing, the court determines that:

- (a) such sale, transfer, conveyance or disposal is necessary for the continued operation of the debtor's business; and
- (b) the debtor has made arrangements to provide a substitute lien or ownership right that provides an equal level of security for the counter-party's claim or right.

Provided, That properties held by the debtor where the debtor has authority to sell such as trust receipt or consignment arrangements may be sold or disposed of by the debtor, if such sale or disposal is necessary for the operation of the debtor's business, and the debtor has made arrangements to provide a substitute lien or ownership right that provides an equal level of security for the counter-party's claim or right.

Sale or disposal of property under this section shall not give rise to any criminal liability under applicable laws.

Sec. 51. Assets of Debtor Held by Third Parties. – In the case of possessory pledges, mechanic's liens or similar claims, third parties who have in their possession or control property of the debtor shall not transfer, convey or otherwise dispose of the same to persons other than the debtor, unless upon prior approval of the rehabilitation receiver. The rehabilitation receiver may also:

- (a) demand the surrender or the transfer of the possession or control of such property to the rehabilitation receiver or any other person, subject to payment of the claims secured by any possessory lien/s thereon;
- (b) allow said third parties to retain possession or control, if such an arrangement would more likely preserve or increase the value of the property in question or the total value of the assets of the debtor; or
- (c) undertake any other disposition of the said property as may be beneficial for the rehabilitation of the debtor, after notice and hearing, and approval of the court.

Sec. 52. Rescission or Nullity of Sale, Payment, Transfer or Conveyance of Assets. – The court may rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbering thereof by the debtor or its agents or representatives after the commencement date which are not in the ordinary course of the business of the debtor: *Provided, however*, That the unencumbered property may be sold, encumbered or otherwise disposed of upon order of the court after notice and hearing:

- (a) if such are in the interest of administering the debtor and facilitating the preparation and implementation of a Rehabilitation Plan;
- (b) in order to provide a substitute lien, mortgage or pledge of property under this Act;
- (c) for payments made to meet administrative expenses as they arise;
- (d) for payments to victims of quasi-delicts upon a showing that the claim is valid and the debtor has insurance to reimburse the debtor for the payments made;
- (e) for payments made to repurchase property of the debtor that is auctioned off in a judicial or extrajudicial sale under this Act; or

- (f) for payments made to reclaim property of the debtor held pursuant to a possessory lien.

SEC. 53. Assets Subject to Rapid Obsolescence, Depreciation and Diminution of Value. –

Upon the application of a secured creditor holding a lien against or holder of an ownership interest in property held by the debtor that is subject to potentially rapid obsolescence, depreciation or diminution in value, the court shall, after notice and hearing, order the debtor or rehabilitation receiver to take reasonable steps necessary to prevent the depreciation. If depreciation cannot be avoided and such depreciation is jeopardizing the security or property interest of the secured creditor or owner, the court shall:

- (a) allow the encumbered property to be foreclosed upon by the secured creditor according to the relevant agreement between the debtor and the secured creditor, applicable rules of procedure and relevant legislation: *Provided*, That the proceeds of the sale will be distributed in accordance with the order prescribed under the rules of concurrence and preference of credits; or
- (b) upon motion of, or with the consent of the affected secured creditor or interest owner, order the conveyance of a lien against or ownership interest in substitute property of the debtor to the secured creditor: *Provided*, That other creditors holding liens on such property, if any, do not object thereto, or, if such property is not available;
- (c) order the conveyance to the secured creditor or holder of an ownership interest of a lien on the residual funds from the sale of encumbered property during the proceedings; or
- (d) allow the sale or disposition of the property: *Provided*, That the sale or disposition will maximize the value of the property for the benefit of the secured creditor and the debtor, and the proceeds of the sale will be distributed in accordance with the order prescribed under the rules of concurrence and preference of credits.

SEC. 54. Post-commencement Interest. – The rate and term of interest, if any, on secured and unsecured claims shall be determined and provided for in the approved Rehabilitation Plan.

SEC. 55. Post-commencement Loans and Obligations. – With the approval of the court upon the recommendation of the rehabilitation receiver, the debtor, in order to enhance its rehabilitation, may:

- (a) enter into credit arrangements; or
- (b) enter into credit arrangements, secured by mortgages of its unencumbered property or secondary mortgages of encumbered property with the approval of senior secured parties with regard to the encumbered property; or
- (c) incur other obligations as may be essential for its rehabilitation.

The payment of the foregoing obligations shall be considered administrative expenses under this Act.

Sec. 56. *Treatment of Employees, Claims.* – Compensation of employees required to carry on the business shall be considered an administrative expense. Claims of separation pay for months worked prior to the commencement date shall be considered a pre-commencement claim. Claims for salary and separation pay for work performed after the commencement date shall be an administrative expense.

Sec. 57. *Treatment of Contracts.* – Unless cancelled by virtue of a final judgment of a court of competent jurisdiction issued prior to the issuance of the Commencement Order, or at anytime thereafter by the court before which the rehabilitation proceedings are pending, all valid and subsisting contracts of the debtor with creditors and other third parties as at the commencement date shall continue in force: *Provided*, That within 90 days following the commencement of proceedings, the debtor, with the consent of the rehabilitation receiver, shall notify each contractual counter-party of whether it is confirming the particular contract. Contractual obligations of the debtor arising or performed during this period, and afterwards for confirmed contracts, shall be considered administrative expenses. Contracts not confirmed within the required deadline shall be considered terminated. Claims for actual damages, if any, arising as a result of the election to terminate a contract shall be considered a pre-commencement claim against the debtor. Nothing contained herein shall prevent the cancellation or termination of any contract of the debtor for any ground provided by law.

(G) Avoidance Proceedings.

SECTION 58. *Rescission or Nullity of Certain Pre-commencement Transactions.* – Any transaction occurring prior to commencement date entered into by the debtor or involving its funds or assets may be rescinded or declared null and void on the ground that the same was executed with intent to defraud a creditor or creditors or which constitute undue preference of creditors. Without limiting the generality of the foregoing, a disputable presumption of such design shall arise if the transaction:

- (a) provides unreasonably inadequate consideration to the debtor and is executed within 90 days prior to the commencement date;
- (b) involves an accelerated payment of a claim to a creditor within 90 days prior to the commencement date;
- (c) provides security or additional security executed within 90 days prior to the commencement date;
- (d) involves creditors, where a creditor obtained, or received the benefit of, more than its *pro rata* share in the assets of the debtor, executed at a time when the debtor was insolvent; or

- (e) is intended to defeat, delay or hinder the ability of the creditors to collect claims where the effect of the transaction is to put assets of the debtor beyond the reach of creditors or to otherwise prejudice the interests of creditors.

Provided, however, That nothing in this section shall prevent the court from rescinding or declaring as null and void a transaction on other grounds provided by relevant legislation and jurisprudence: *Provided, further,* That the provisions of the Civil Code on rescission shall in any case apply to these transactions.

SEC. 59. Actions for Rescission or Nullity.

- (a) The rehabilitation receiver or, with his conformity, any creditor may initiate and prosecute any action to rescind, or declare null and void any transaction described in Section 58 hereof. If the rehabilitation receiver does not consent to the filing or prosecution of such action, any creditor may seek leave of court to commence said action.
- (b) If leave of court is granted under subsection (a), the rehabilitation receiver shall assign and transfer to the creditor all rights, title and interest in the chose in action or subject matter of the proceeding, including any document in support thereof.
- (c) Any benefit derived from a proceeding taken pursuant to subsection (a), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate.
- (d) Where, before an order is made under subsection (a), the rehabilitation receiver (or liquidator) signifies to the court his readiness to institute the proceeding for the benefit of the creditors, the order shall fix the time within which he shall do so and, in that case, the benefit derived from the proceeding, if instituted within the time limits so fixed, belongs to the estate.

(H) Treatment of Secured Creditors.

SECTION 60. No Diminution of Secured Creditor Rights. – The issuance of the Commencement Order and the Suspension or Stay Order, and any other provision of this Act, shall not be deemed in any way to diminish or impair the security or lien of a secured creditor, or the value of his lien or security, except that his right to enforce said security or lien may be suspended during the term of the Stay Order.

The court, upon motion or recommendation of the rehabilitation receiver, may allow a secured creditor to enforce his security or lien, or foreclose upon property of the debtor securing his/its claim, if the said property is not necessary for the rehabilitation of the debtor. The secured creditor and/or the other lien holders shall be admitted to the rehabilitation proceedings only for the balance of his claim, if any.

Sec. 61. Lack of Adequate Protection. – The court, on motion or *motu proprio*, may terminate, modify or set conditions for the continuance of suspension of payment, or relieve a claim from the coverage thereof, upon showing that:

- (a) a creditor does not have adequate protection over property securing its claim;
or
- (b) the value of a claim secured by a lien on property which is not necessary for rehabilitation of the debtor exceeds the fair market value of the said property.

For purposes of this section, a creditor shall be deemed to lack adequate protection if it can be shown that:

- (a) the debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;
- (b) the debtor fails or refuses to take commercially reasonable steps to maintain the property; or
- (c) the property has depreciated to an extent that the creditor is under secured.

Upon showing of a lack of protection, the court shall order the debtor or the rehabilitation receiver to make arrangements to provide for the insurance or maintenance of the property; or to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may modify the Stay Order to allow the secured creditor lacking adequate protection to enforce its security claim against the debtor: *Provided, however*, That the court may deny the creditor the remedies in this paragraph if the property subject of the enforcement is required for the rehabilitation of the debtor.

(I) Administration of Proceedings.

SECTION 62. Contents of a Rehabilitation Plan. – The Rehabilitation Plan shall, as a minimum:

- (a) specify the underlying assumptions, the financial goals and the procedures proposed to accomplish such goals;
- (b) compare the amounts expected to be received by the creditors under the Rehabilitation Plan with those that they will receive if liquidation ensues within the next 120 days;
- (c) contain information sufficient to give the various classes of creditors a reasonable basis for determining whether supporting the Plan is in their financial interest when compared to the immediate liquidation of the debtor, including any reduction of principal interest and penalties payable to the creditors;
- (d) establish classes of voting creditors;

- (e) establish subclasses of voting creditors if prior approval has been granted by the court;
- (f) indicate how the insolvent debtor will be rehabilitated including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of a new business entity or other similar arrangements as may be necessary to restore the financial well-being and viability of the insolvent debtor;
- (g) specify the treatment of each class or subclass described in subsections (d) and (e);
- (h) provide for equal treatment of all claims within the same class or subclass, unless a particular creditor voluntarily agrees to less favorable treatment;
- (i) ensure that the payments made under the plan follow the priority established under the provisions of the Civil Code on concurrence and preference of credits and other applicable laws;
- (j) maintain the security interest of secured creditors and preserve the liquidation value of the security unless such has been waived or modified voluntarily;
- (k) disclose all payments to creditors for pre-commencement debts made during the proceedings and the justifications thereof;
- (l) describe the disputed claims and the provisioning of funds to account for appropriate payments should the claim be ruled valid or its amount adjusted;
- (m) identify the debtor's role in the implementation of the Plan;
- (n) state any rehabilitation covenants of the debtor, the breach of which shall be considered a material breach of the Plan;
- (o) identify those responsible for the future management of the debtor and the supervision and implementation of the Plan, their affiliation with the debtor and their remuneration;
- (p) address the treatment of claims arising after the confirmation of the Rehabilitation Plan;
- (q) require the debtor and its counter-parties to adhere to the terms of all contracts that the debtor has chosen to confirm;
- (r) arrange for the payment of all outstanding administrative expenses as a condition to the Plan's approval unless such condition has been waived in writing by the creditors concerned;
- (s) arrange for the payment of all outstanding taxes and assessments, or an adjusted amount pursuant to a compromise settlement with the BIR or other applicable tax authorities;

- (t) include a certified copy of a certificate of tax clearance or evidence of a compromise settlement with the BIR;
- (u) include a valid and binding resolution of a meeting of the debtor's stockholders to increase the shares by the required amount in cases where the Plan contemplates an additional issuance of shares by the debtor;
- (v) state the compensation and status, if any, of the rehabilitation receiver after the approval of the Plan; and
- (w) contain provisions for conciliation and/or mediation as a prerequisite to court assistance or intervention in the event of any disagreement in the interpretation or implementation of the Rehabilitation Plan.

Sec. 63. Consultation with Debtor and Creditors. – If the court gives due course to the petition, the rehabilitation receiver shall confer with the debtor and all the classes of creditors, and may consider their views and proposals in the review, revision or preparation of a new Rehabilitation Plan.

Sec. 64. Creditor Approval of Rehabilitation Plan. – The rehabilitation receiver shall notify the creditors and stakeholders that the Plan is ready for their examination. Within 20 days from the said notification, the rehabilitation receiver shall convene the creditors, either as a whole or per class, for purposes of voting on the approval of the Plan. The Plan shall be deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the Plan. For purposes of this section, the Plan is deemed to have been approved by a class of creditors if members of the said class holding more than 50 percent of the total claims of the said class vote in favor of the Plan. The votes of the creditors shall be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver pursuant to Section 44 hereof.

Notwithstanding the rejection of the Rehabilitation Plan, the court may confirm the Rehabilitation Plan if all of the following circumstances are present:

- (a) The Rehabilitation Plan complies with the requirement specified in this Act;
- (b) The rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;
- (c) The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
- (d) The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation.

Sec. 65. *Submission of Rehabilitation Plan to the Court.* – If the Rehabilitation Plan is approved, the rehabilitation receiver shall submit the same to the court for confirmation. Within five days from receipt of the Rehabilitation Plan, the court shall notify the creditors that the Rehabilitation Plan has been submitted for confirmation, that any creditor may obtain copies of the Rehabilitation Plan and that any creditor may file an objection thereto.

Sec. 66. *Filing of Objections to Rehabilitation Plan.* – A creditor may file an objection to the Rehabilitation Plan within 20 days from receipt of notice from the court that the Rehabilitation Plan has been submitted for confirmation. Objections to a Rehabilitation Plan shall be limited to the following:

- (a) The creditors' support was induced by fraud;
- (b) The documents or data relied upon in the Rehabilitation Plan are materially false or misleading; or
- (c) The Rehabilitation Plan is in fact not supported by the voting creditors.

Sec. 67. *Hearing on the Objections.* – If objections have been submitted during the relevant period, the court shall issue an order setting the time and date for the hearing or hearings on the objections.

If the court finds merit in the objection, it shall order the rehabilitation receiver or other party to cure the defect, whenever feasible. If the court determines that the debtor acted in bad faith, or that it is not feasible to cure the defect, the court shall convert the proceedings into one for the liquidation of the debtor under Chapter V of this Act.

Sec. 68. *Confirmation of the Rehabilitation Plan.* – If no objections are filed within the relevant period or, if objections are filed, the court finds them lacking in merit, or determines that the basis for the objection has been cured, or determines that the debtor has complied with an order to cure the objection, the court shall issue an order confirming the Rehabilitation Plan.

The court may confirm the Rehabilitation Plan notwithstanding unresolved disputes over claims if the Rehabilitation Plan has made adequate provisions for paying such claims.

For the avoidance of doubt, the provisions of other laws to the contrary notwithstanding, the court shall have the power to approve or implement the Rehabilitation Plan despite the lack of approval, or objection from the owners, partners or stockholders of the insolvent debtor: *Provided*, That the terms thereof are necessary to restore the financial well-being and viability of the insolvent debtor.

Sec. 69. *Effect of Confirmation of the Rehabilitation Plan.* – The confirmation of the Rehabilitation Plan by the court shall result in the following:

- (a) The Rehabilitation Plan and its provisions shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the Rehabilitation Plan or whether or not their claims have been scheduled;
- (b) The debtor shall comply with the provisions of the Rehabilitation Plan and shall take all actions necessary to carry out the Plan;
- (c) Payments shall be made to the creditors in accordance with the provisions of the Rehabilitation Plan;
- (d) Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the Rehabilitation Plan;
- (e) Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the Plan is successfully implemented; and
- (f) Claims arising after approval of the Plan that are otherwise not treated by the Plan are not subject to any Suspension Order.

The Order confirming the Plan shall comply with Rule 36 of the Rules of Court: *Provided, however,* That the court may maintain jurisdiction over the case in order to resolve claims against the debtor that remain contested and allegations that the debtor has breached the Plan.

SEC. 70. *Liability of General Partners of a Partnership for Unpaid Balances under an Approved Plan.* – The approval of the Plan shall not affect the rights of creditors to pursue actions against the general partners of a partnership to the extent they are liable under relevant legislation for the debts thereof.

SEC. 71. *Treatment of Amounts of Indebtedness or Obligations Forgiven or Reduced.* – Amounts of any indebtedness or obligations reduced or forgiven in connection with a Plan's approval shall not be subject to any tax, in furtherance of the purposes of this Act.

SEC. 72. *Period for Confirmation of the Rehabilitation Plan.* – The court shall have a maximum period of one year from the date of the filing of the petition to confirm a Rehabilitation Plan.

If no Rehabilitation Plan is confirmed within the said period, the proceedings may, upon motion or *motu proprio*, be converted into one for the liquidation of the debtor.

SEC. 73. *Accounting Discharge of Rehabilitation Receiver.* – Upon the confirmation of the Rehabilitation Plan, the rehabilitation receiver shall provide a final report and accounting to the court. Unless the Rehabilitation Plan specifically requires and describes the role

of the rehabilitation receiver after the approval of the Rehabilitation Plan, the court shall discharge the rehabilitation receiver of his duties.

(J) Termination of Proceedings.

SECTION 74. Termination of Proceedings. – The rehabilitation proceedings under Chapter II shall, upon motion by any stakeholder or the rehabilitation receiver, be terminated by order of the court either declaring a successful implementation of the Rehabilitation Plan or a failure of rehabilitation.

There is failure of rehabilitation in the following cases:

- (a) Dismissal of the petition by the court;
- (b) The debtor, fails to submit a Rehabilitation Plan;
- (c) Under the Rehabilitation Plan submitted by the debtor, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period;
- (d) The Rehabilitation Plan or its amendment is approved by the court but in the implementation thereof, the debtor fails to perform its obligations thereunder, or there is a failure to realize the objectives, targets or goals set forth therein, including the timelines and conditions for the settlement of the obligations due to the creditors and other claimants;
- (e) The commission of fraud in securing the approval of the Rehabilitation Plan or its amendment; and
- (f) Other analogous circumstances as may be defined by the rules of procedure.

Upon a breach of, or upon a failure of the Rehabilitation Plan, the court, upon motion by an affected party, may:

- (1) issue an order directing that the breach be cured within a specified period of time, failing which the proceedings may be converted to a liquidation;
- (2) issue an order converting the proceedings to a liquidation;
- (3) allow the debtor or rehabilitation receiver to submit amendments to the Rehabilitation Plan, the approval of which shall be governed by the same requirements for the approval of a Rehabilitation Plan under this subchapter;
- (4) issue any other order to remedy the breach consistent with the present regulation, other applicable law and the best interests of the creditors; or
- (5) enforce the applicable provisions of the Rehabilitation Plan through a writ of execution.

Sec. 75. *Effects of Termination.* – Termination of the proceedings shall result in the following:

- (a) The discharge of the rehabilitation receiver, subject to his submission of a final accounting; and
- (b) The lifting of the Stay Order and any other court order holding in abeyance any action for the enforcement of a claim against the debtor.

Provided, however, That if the termination of proceedings is due to failure of rehabilitation or dismissal of the petition for reasons other than technical grounds, the proceedings shall be immediately converted to liquidation as provided in Section 92 of this Act.

CHAPTER III PRE-NEGOTIATED REHABILITATION

SECTION 76. *Petition by Debtor.* – An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a pre-negotiated Rehabilitation Plan which has been endorsed or approved by creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50 percent of the total secured claims of the debtor and unsecured creditors holding more than 50 percent of the total unsecured claims of the debtor. The petition shall include, as a minimum:

- (a) a schedule of the debtor's debts and liabilities;
- (b) an inventory of the debtor's assets;
- (c) the pre-negotiated Rehabilitation Plan, including the names of at least three qualified nominees for rehabilitation receiver; and
- (d) a summary of disputed claims against the debtor and a report on the provisioning of funds to account for appropriate payments should any such claims be ruled valid or their amounts adjusted.

Sec. 77. *Issuance of Order.* – Within five working days, and after determination that the petition is sufficient in form and substance, the court shall issue an Order which shall:

- (a) identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) declare that the debtor is under rehabilitation;
- (c) summarize the ground/s for the filing of the petition;
- (d) direct the publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two consecutive weeks, with the first publication to be made within seven days from the time of its issuance;

- (e) direct the service by personal delivery of a copy of the petition on each creditor who is not a petitioner holding at least 10 percent of the total liabilities of the debtor, as determined in the schedule attached to the petition, within three days;
- (f) state that copies of the petition and the Rehabilitation Plan are available for examination and copying by any interested party;
- (g) state that creditors and other interested parties opposing the petition or Rehabilitation Plan may file their objections or comments thereto within a period of not later than 20 days from the second publication of the Order;
- (h) appoint a rehabilitation receiver, if provided for in the Plan; and
- (i) include a Suspension Or Stay Order as described in this Act.

Sec. 78. Approval of the Plan. – Within 10 days from the date of the second publication of the Order, the court shall approve the Rehabilitation Plan unless a creditor or other interested party submits an objection to it in accordance with the next succeeding section.

Sec. 79. Objection to the Petition or Rehabilitation Plan. – Any creditor or other interested party may submit to the court a verified objection to the petition or the Rehabilitation Plan not later than eight days from the date of the second publication of the Order mentioned in Section 77 hereof. The objections shall be limited to the following:

- (a) The allegations in the petition or the Rehabilitation Plan, or the attachments thereto, are materially false or misleading;
- (b) The majority of any class of creditors do not in fact support the Rehabilitation Plan;
- (c) The Rehabilitation Plan fails to accurately account for a claim against the debtor and the claim is not categorically declared as a contested claim; or
- (d) The support of the creditors, or any of them, was induced by fraud.

Copies of any objection to the petition or the Rehabilitation Plan shall be served on the debtor, the rehabilitation receiver (if applicable), the secured creditor with the largest claim and who supports the Rehabilitation Plan, and the unsecured creditor with the largest claim and who supports the Rehabilitation Plan.

Sec. 80. Hearing on the Objections. – After receipt of an objection, the court shall set the same for hearing. The date of the hearing shall be no earlier than 20 days and no later than 30 days from the date of the second publication of the Order mentioned in Section 77 hereof. If the court finds merit in the objection, it shall direct the debtor, when feasible, to cure the defect within a reasonable period. If the court determines that the debtor or creditors supporting the Rehabilitation Plan acted in bad faith, or that the

objection is non-curable, the court may order the conversion of the proceedings into liquidation. A finding by the court that the objection has no substantial merit, or that the same has been cured, shall be deemed an approval of the Rehabilitation Plan.

Sec. 81. *Period for Approval of Rehabilitation Plan.* – The court shall have a maximum period of 120 days from the date of the filing of the petition to approve the Rehabilitation Plan. If the court fails to act within the said period, the Rehabilitation Plan shall be deemed approved.

Sec. 82. *Effect of Approval.* – Approval of a Plan under this chapter shall have the same legal effect as confirmation of a Plan under Chapter II of this Act.

CHAPTER IV OUT-OF-COURT OR INFORMAL RESTRUCTURING AGREEMENTS OR REHABILITATION PLANS

SECTION 83. *Out-of-Court or Informal Restructuring Agreements and Rehabilitation Plans.*
– An out-of-court or informal restructuring agreement or Rehabilitation Plan that meets the minimum requirements prescribed in this chapter is hereby recognized as consistent with the objectives of this Act.

Sec. 84. *Minimum Requirements of Out-of-Court or Informal Restructuring Agreements and Rehabilitation Plans.* – For an out-of-court or informal restructuring/workout agreement or Rehabilitation Plan to qualify under this chapter, it must meet the following minimum requirements:

- (a) The debtor must agree to the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan;
- (b) It must be approved by creditors representing at least 67 percent of the secured obligations of the debtor;
- (c) It must be approved by creditors representing at least 75 percent of the unsecured obligations of the debtor; and
- (d) It must be approved by creditors holding at least 85 percent of the total liabilities, secured and unsecured, of the debtor.

Sec. 85. *Standstill Period.* – A standstill period that may be agreed upon by the parties pending negotiation and finalization of the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan contemplated herein shall be effective and enforceable not only against the contracting parties but also against the other creditors: *Provided*, That (a) such agreement is approved by creditors representing more than 50 percent of the total liabilities of the debtor; (b) notice thereof is published in a newspaper of general circulation in the Philippines once a week for two consecutive

weeks; and (c) the standstill period does not exceed 120 days from the date of effectivity. The notice must invite creditors to participate in the negotiation for out-of-court rehabilitation or restructuring agreement and notify them that said agreement will be binding on all creditors if the required majority votes prescribed in Section 84 of this Act are met.

SEC. 86. *Cram Down Effect.* – A restructuring/workout agreement or Rehabilitation Plan that is approved pursuant to an informal workout framework referred to in this chapter shall have the same legal effect as confirmation of a Plan under Section 69 hereof. The notice of the Rehabilitation Plan or restructuring agreement or Plan shall be published once a week for at least three consecutive weeks in a newspaper of general circulation in the Philippines. The Rehabilitation Plan or restructuring agreement shall take effect upon the lapse of 15 days from the date of the last publication of the notice thereof.

SEC. 87. *Amendment or Modification.* – Any amendment of an out-of-court restructuring/workout agreement or Rehabilitation Plan must be made in accordance with the terms of the agreement and with due notice on all creditors.

SEC. 88. *Effect of Court Action or Other Proceedings.* – Any court action or other proceedings arising from, or relating to, the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan shall not stay its implementation, unless the relevant party is able to secure a temporary restraining order or injunctive relief from the Court of Appeals.

SEC. 89. *Court Assistance.* – The insolvent debtor and/or creditor may seek court assistance for the execution or implementation of a Rehabilitation Plan under this chapter, under such rules of procedure as may be promulgated by the Supreme Court.

CHAPTER V

LIQUIDATION OF INSOLVENT JURIDICAL DEBTORS

SECTION 90. *Voluntary Liquidation.* – An insolvent debtor may apply for liquidation by filing a petition for liquidation with the court. The petition shall be verified, shall establish the insolvency of the debtor and shall contain, whether as an attachment or as part of the body of the petition:

- (a) a schedule of the debtor's debts and liabilities including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any;
- (b) an inventory of all its assets including receivables and claims against third parties; and
- (c) the names of at least three nominees to the position of liquidator.

At any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings, the debtor may also initiate liquidation proceedings by filing a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified, shall contain or set forth the same matters required in the preceding paragraph, and state that the debtor is seeking immediate dissolution and termination of its corporate existence.

If the petition or the motion, as the case may be, is sufficient in form and substance, the court shall issue a Liquidation Order mentioned in Section 112 hereof.

Sec. 91. *Involuntary Liquidation.* – Three or more creditors the aggregate of whose claims is at least either One Million Pesos (P1 million) or at least 25 percent of the subscribed capital stock or partner’s contributions of the debtor, whichever is higher, may apply for and seek the liquidation of an insolvent debtor by filing a petition for liquidation of the debtor with the court. The petition shall show that:

- (a) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least 180 days or that the debtor has failed generally to meet its liabilities as they fall due; and
- (b) there is no substantial likelihood that the debtor may be rehabilitated.

At any time during the pendency of or after a rehabilitation court-supervised or pre-negotiated rehabilitation proceedings, three or more creditors whose claims is at least either One Million Pesos (P1 million) or at least 25 percent of the subscribed capital or partner’s contributions of the debtor, whichever is higher, may also initiate liquidation proceedings by filing a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified, shall contain or set forth the same matters required in the preceding paragraph, and state that the movants are seeking the immediate liquidation of the debtor.

If the petition or motion is sufficient in form and substance, the court shall issue an Order:

- (1) directing the publication of the petition or motion in a newspaper of general circulation once a week for two consecutive weeks; and
- (2) directing the debtor and all creditors who are not the petitioners to file their comment on the petition or motion within 15 days from the date of last publication.

If, after considering the comments filed, the court determines that the petition or motion is meritorious, it shall issue the Liquidation Order mentioned in Section 112 hereof.

Sec. 92. Conversion by the Court into Liquidation Proceedings. – During the pendency of court-supervised or pre-negotiated rehabilitation proceedings, the court may order the conversion of rehabilitation proceedings to liquidation proceedings pursuant to: (a) Section 25(c) of this Act; or (b) Section 72 of this Act; or (c) Section 75 of this Act; or (d) Section 90 of this Act; or at any other time upon the recommendation of the rehabilitation receiver that the rehabilitation of the debtor is not feasible. Thereupon, the court shall issue the Liquidation Order mentioned in Section 112 hereof.

Sec. 93. Powers of the Securities and Exchange Commission (SEC). – The provisions of this chapter shall not affect the regulatory powers of the SEC under Section 6 of Presidential Decree No. 902-A, as amended, with respect to any dissolution and liquidation proceeding initiated and heard before it.

CHAPTER VI INSOLVENCY OF INDIVIDUAL DEBTORS

(A) Suspension of Payments.

SECTION 94. Petition. – An individual debtor who, possessing sufficient property to cover all his debts but foreseeing the impossibility of meeting them when they respectively fall due, may file a verified petition that he be declared in the state of suspension of payments by the court of the province or city in which he has resided for six months prior to the filing of his petition. He shall attach to his petition, as a minimum:

- (a) a schedule of debts and liabilities;
- (b) an inventory of assets; and
- (c) a proposed agreement with his creditors.

Sec. 95. Action on the Petition. – If the court finds the petition sufficient in form and substance, it shall, within five working days from the filing of the petition, issue an Order:

- (a) calling a meeting of all the creditors named in the schedule of debts and liabilities at such time not less than 15 days nor more than 40 days from the date of such Order and designating the date, time and place of the meeting;
- (b) directing such creditors to prepare and present written evidence of their claims before the scheduled creditors' meeting;
- (c) directing the publication of the said order in a newspaper of general circulation published in the province or city in which the petition is filed once a week for two consecutive weeks, with the first publication to be made within seven days from the time of the issuance of the Order;

- (d) directing the clerk of court to cause the sending of a copy of the Order by registered mail, postage prepaid, to all creditors named in the schedule of debts and liabilities;
- (e) forbidding the individual debtor from selling, transferring, encumbering or disposing in any manner of his property, except those used in the ordinary operations of commerce or of industry in which the petitioning individual debtor is engaged, so long as the proceedings relative to the suspension of payments are pending;
- (f) prohibiting the individual debtor from making any payment outside of the necessary or legitimate expenses of his business or industry, so long as the proceedings relative to the suspension of payments are pending; and
- (g) appointing a commissioner to preside over the creditors' meeting.

Sec. 96. Actions Suspended. – Upon motion filed by the individual debtor, the court may issue an order suspending any pending execution against the individual debtor: *Provided*, that properties held as security by secured creditors shall not be the subject of such suspension order. The suspension order shall lapse when three months shall have, passed without the proposed agreement being accepted by the creditors or as soon as such agreement is denied.

No creditor shall sue or institute proceedings to collect his claim from the debtor from the time of the filing of the petition for suspension of payments and for as long as proceedings remain pending except:

- (a) those creditors having claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of the debtor incurred in the 60 days immediately prior to the filing of the petition; and
- (b) secured creditors.

Sec. 97. Creditors' Meeting. – The presence of creditors holding claims amounting to at least three-fifths of the liabilities shall be necessary for holding a meeting. The commissioner appointed by the court shall preside over the meeting and the clerk of court shall act as the secretary thereof, subject to the following rules:

- (a) The clerk shall record the creditors present and amount of their respective claims;
- (b) The commissioner shall examine the written evidence of the claims. If the creditors present hold at least three-fifths of the liabilities of the individual debtor, the commissioner shall declare the meeting open for business;
- (c) The creditors and individual debtor shall discuss the propositions in the proposed agreement and put them to a vote;
- (d) To form a majority, it is necessary:

- (1) that two-thirds of the creditors voting unite upon the same proposition; and
 - (2) that the claims represented by said majority vote amount to at least three-fifths of the total liabilities of the debtor mentioned in the petition; and
- (e) After the result of the voting has been announced, all protests made against the majority vote shall be drawn up, and the commissioner and the individual debtor together with all creditors taking part in the voting shall sign the affirmed propositions.

No creditor who incurred his credit within 90 days prior to the filing of the petition shall be entitled to vote.

Sec. 98. *Persons Who May Refrain From Voting.* – Creditors who are unaffected by the Suspension Order may refrain from attending the meeting and from voting therein. Such persons shall not be bound by any agreement determined upon at such meeting, but if they should join in the voting they shall be bound in the same manner as are the other creditors.

Sec. 99. *Rejection of the Proposed Agreement.* – The proposed agreement shall be deemed rejected if the number of creditors required for holding a meeting do not attend thereat, or if the two majorities mentioned in Section 97 hereof are not in favor thereof. In such instances, the proceeding shall be terminated without recourse and the parties concerned shall be at liberty to enforce the rights which may correspond to them.

Sec. 100. *Objections.* – If the proposal of the individual debtor, or any amendment thereof made during the creditors' meeting, is approved by the majority of creditors in accordance with Section 97 hereof, any creditor who attended the meeting and who dissented from and protested against the vote of the majority may file an objection with the court within 10 days from the date of the last creditors' meeting. The causes for which objection may be made to the decision made by the majority during the meeting shall be: (a) defects in the call for the meeting, in the holding thereof, and in the deliberations had thereat which prejudice the rights of the creditors; (b) fraudulent connivance between one or more creditors and the individual debtor to vote in favor of the proposed agreement; or (c) fraudulent conveyance of claims for the purpose of obtaining a majority. The court shall hear and pass upon such objection as soon as possible and in a summary manner.

In case the decision of the majority of creditors to approve the individual debtor's proposal or any amendment thereof made during the creditors' meeting is annulled by the court, the court shall declare the proceedings terminated and the creditors shall be at liberty to exercise the rights which may correspond to them.

Sec. 101. *Effects of Approval of Proposed Agreement.* – If the decision of the majority of the creditors to approve the proposed agreement or any amendment thereof made during the creditors' meeting is upheld by the court, or when no opposition or objection to said decision has been presented, the court shall order that the agreement be carried out and all parties bound thereby to comply with its terms.

The court may also issue all orders which may be necessary or proper to enforce the agreement on motion of any affected party. The Order confirming the approval of the proposed agreement or any amendment thereof made during the creditors' meeting shall be binding upon all creditors whose claims are included in the schedule of debts and liabilities submitted by the individual debtor and who were properly summoned, but not upon: (a) those creditors having claims for personal labor, maintenance, expenses of last illness and funeral of the wife or children of the debtor incurred in the 60 days immediately prior to the filing of the petition, and (b) secured creditors who failed to attend the meeting or refrained from voting therein.

Sec. 102. *Failure of Individual Debtor to Perform Agreement.* – If the individual debtor fails, wholly or in part, to perform the agreement decided upon at the meeting of the creditors, all the rights which the creditors had against the individual debtor before the agreement shall revert in them. In such case the individual debtor may be made subject to the insolvency proceedings in the manner established by this Act.

(B) Voluntary Liquidation.

SECTION 103. *Application.* – An individual debtor whose properties are not sufficient to cover his liabilities, and owing debts exceeding Five Hundred Thousand Pesos (P500,000), may apply to be discharged from his debts and liabilities by filing a verified petition with the court of the province or city in which he has resided for six months prior to the filing of such petition. He shall attach to his petition a schedule of debts and liabilities and an inventory of assets. The filing of such petition shall be an act of insolvency.

Sec. 104. *Liquidation Order.* – If the court finds the petition sufficient in form and substance, it shall, within five working days, issue the Liquidation Order mentioned in Section 112 hereof.

(C) Involuntary Liquidation.

SECTION 105. *Petition; Acts of Insolvency.* – Any creditor or group of creditors with a claim of, or with claims aggregating, at least Five Hundred Thousand Pesos (P500,000) may file a verified petition for liquidation with the court of the province or city in which the individual debtor resides.

The following shall be considered acts of insolvency, and the petition for liquidation shall set forth or allege at least one of such acts:

- (a) That such person is about to depart or has departed from the Republic of the Philippines, with intent to defraud his creditors;
- (b) That being absent from the Republic of the Philippines, with intent to defraud his creditors, he remains absent;
- (c) That he conceals himself to avoid the service of legal process for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (d) That he conceals, or is removing, any of his property to avoid its being attached or taken on legal process;
- (e) That he has suffered his property to remain under attachment or legal process for three days for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (f) That he has confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying the liquidation or of defrauding any creditor or claimant;
- (g) That he has willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (h) That he has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder or delay the liquidation or defraud anyone of his creditors;
- (i) That he has made any assignment, gift, sale, conveyance or transfer of his estate, property, rights or credits with intent to hinder or delay the liquidation or defraud his creditors;
- (j) That he has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights or credits;
- (k) That being a merchant or tradesman, he has generally defaulted in the payment of his current obligations for a period of 30 days;
- (l) That for a period of 30 days, he has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and
- (m) That an execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment.

The petitioning creditor/s shall post a bond in such sum as the court shall direct, conditioned that if the petition for liquidation is dismissed by the court, or withdrawn by the petitioner, or if the debtor shall not be declared an insolvent, the petitioners will, pay to the debtor all costs, expenses, damages occasioned by the proceedings, and attorney's fees.

Sec. 106. Order to Individual Debtor to Show Cause. – Upon the filing of such creditors' petition, the court shall issue an Order requiring the individual debtor to show cause, at a time and place to be fixed by the said court, why he should not be adjudged an insolvent. Upon good cause shown, the court may issue an Order forbidding the individual debtor from making payments of any of his debts, and transferring any property belonging to him. However, nothing contained herein shall affect or impair the rights of a secured creditor to enforce his lien in accordance with its terms.

Sec. 107. Default. – If the individual debtor shall default or if, after trial, the issues are found in favor of the petitioning creditors, the court shall issue the Liquidation Order mentioned in Section 112 hereof.

Sec. 108. Absent Individual Debtor. – In all cases where the individual debtor resides out of the Republic of the Philippines; or has departed therefrom; or cannot, after due diligence, be found therein; or conceals himself to avoid service of the Order to show cause, or any other preliminary process or orders in the matter, then the petitioning creditors, upon submitting the affidavits requisite to procure an Order of publication, and presenting a bond in double the amount of the aggregate sum of their claims against the individual debtor, shall be entitled to an Order of the court directing the sheriff of the province or city in which the matter is pending to take into his custody a sufficient amount of property of the individual debtor to satisfy the demands of the petitioning creditors and the costs of the proceedings. Upon receiving such Order of the court to take into custody property of the individual debtor, it shall be the duty of the sheriff to take possession of the property and effects of the individual debtor, not exempt from execution, to an extent sufficient to cover the amount provided for, and to prepare, within three days from the time of taking such possession, a complete inventory of all the property so taken, and to return it to the court as soon as completed. The time for taking the inventory and making return thereof may be extended for good cause shown to the court. The sheriff shall also prepare a schedule of the names and residences of the creditors, and the amount due each, from the books of the debtor, or from such other papers or data of the individual debtor available as may come to his possession, and shall file such schedule or list of creditors and inventory with the clerk of court.

Sec. 109. All Property Taken to be Held for All Creditors; Appeal Bonds; Exceptions to Sureties. – In all cases where property is taken into custody by the sheriff, if it does not embrace all the property and effects of the debtor not exempt from execution, any other creditor or creditors of the individual debtor, upon giving bond to be approved by the court in double the amount of their claims, singly or jointly, shall be entitled to similar orders and to like action, by the sheriff, until all claims be provided for, if there be sufficient property or effects. All property taken into custody by the sheriff by virtue of the giving of any such bonds shall be held by him for the benefit of all creditors of the individual debtor whose claims shall be duly proved as provided in this Act. The

bonds provided for in this section and the preceding section to procure the order for custody of the property and effects of the individual debtor shall be conditioned that if, upon final hearing of the petition in insolvency, the court shall find in favor of the petitioners, such bonds and all of them shall be void; if the decision be in favor of the individual debtor, the proceedings shall be dismissed, and the individual debtor, his heirs, administrators, executors or assigns shall be entitled to recover such sum of money as shall be sufficient to cover the damages sustained by him, not to exceed the amount of the respective bonds. Such damages shall be fixed and allowed by the court. If either the petitioners or the debtor shall appeal from the decision of the court, upon final hearing of the petition, the appellant shall be required to give bond to the successful party in a sum double the amount of the value of the property in controversy, and for the costs of the proceedings.

Any person interested in the estate may take exception to the sufficiency of the sureties on such bond or bonds. When excepted to, the petitioner's sureties, upon notice to the person excepting of not less than two nor more than five days, must justify as to their sufficiency; and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the judge shall issue an Order vacating the order to take the property of the individual debtor into the custody of the sheriff, or denying the appeal, as the case may be.

Sec. 110. Sale Under Execution. – If, in any case, proper affidavits and bonds are presented to the court or a judge thereof, asking for and obtaining an Order of publication and an Order for the custody of the property of the individual debtor and thereafter the petitioners shall make it appear satisfactorily to the court or a judge thereof that the interest of the parties to the proceedings will be subserved by a sale thereof, the court may order such property to be sold in the same manner as property is sold under execution, the proceeds to be deposited in the court to abide by the result of the proceedings.

CHAPTER VII

PROVISIONS COMMON TO LIQUIDATION IN INSOLVENCY OF INDIVIDUAL AND JURIDICAL DEBTORS

SECTION 111. Use of Term Debtor. – For purposes of this chapter, the term debtor shall include both individual debtor as defined in Section 4(o) and debtor as defined in Section 4(k) of this Act.

(A) The Liquidation Order.

SECTION 112. Liquidation Order. – The Liquidation Order shall:

- (a) declare the debtor insolvent;

- (b) order the liquidation of the debtor and, in the case of a juridical debtor, declare it as dissolved;
- (c) order the sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
- (d) order the publication of the petition or motion in a newspaper of general circulation once a week for two consecutive weeks;
- (e) direct payments of any claims and conveyance of any property due the debtor to the liquidator;
- (f) prohibit payments by the debtor and the transfer of any property by the debtor;
- (g) direct all creditors to file their claims with the liquidator within the period set by the rules of procedure;
- (h) authorize the payment of administrative expenses as they become due;
- (i) state that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of liquidator; and
- (j) set the case for hearing for the election and appointment of the liquidator, which date shall not be less than 30 days nor more than 45 days from the date of the last publication.

Sec. 113. *Effects of the Liquidation Order.* – Upon the issuance of the Liquidation Order:

- (a) the juridical debtor shall be deemed dissolved and its corporate or juridical existence terminated;
- (b) legal title to and control of all the assets of the debtor, except those that may be exempt from execution, shall be deemed vested in the liquidator or, pending his election or appointment, with the court;
- (c) all contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator, within 90 days from the date of his assumption of office, declares otherwise and the contracting party agrees;
- (d) no separate action for the collection of an unsecured claim shall be allowed. Such actions already pending will be transferred to the Liquidator for him to accept and settle or contest. If the liquidator contests or disputes the claim, the court shall allow, hear and resolve such contest except when the case is already on appeal. In such a case, the suit may proceed to judgment, and any final and executory judgment therein for a claim against the debtor shall be filed and allowed in court; and
- (e) no foreclosure proceeding shall be allowed for a period of 180 days.

Sec. 114. *Rights of Secured Creditors.* – The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law. A secured creditor may:

- (a) waive his rights under the security or lien, prove his claim in the liquidation proceedings and share in the distribution of the assets of the debtor; or
- (b) maintain his rights under his security or lien.

If the secured creditor maintains his rights under the security or lien:

- (1) the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance; if its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;
- (2) the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
- (3) the secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

(B) The Liquidator.

SECTION 115. *Election of Liquidator.* – Only creditors who have filed their claims within the period set by the court, and whose claims are not barred by the statute of limitations, will be allowed to vote in the election of the liquidator. A secured creditor will not be allowed to vote, unless: (a) he waives his security or lien; or (b) has the value of the property subject of his security or lien fixed by agreement with the liquidator, and is admitted for the balance of his claim.

The creditors entitled to vote will elect the liquidator in open court. The nominee receiving the highest number of votes cast in terms of amount of claims, and who is qualified pursuant to Section 118 hereof, shall be appointed as the liquidator.

Sec. 116. *Court-Appointed Liquidator.* – The court may appoint the liquidator if:

- (a) on the date set for the election of the liquidator, the creditors do not attend;
- (b) the creditors who attend, fail or refuse to elect a liquidator;
- (c) after being elected, the liquidator fails to qualify; or
- (d) a vacancy occurs for any reason whatsoever. In any of the cases provided herein, the court may instead set another hearing for the election of the liquidator.

Provided, further, That nothing in this section shall be construed to prevent a rehabilitation receiver, who was administering the debtor prior to the commencement of the liquidation, from being appointed as a liquidator.

SEC. 117. Oath and Bond of the Liquidator. – Prior to entering upon his powers, duties and responsibilities, the liquidator shall take an oath and file a bond, in such amount to be fixed by the court, conditioned upon the proper and faithful discharge of his powers, duties and responsibilities.

SEC. 118. Qualifications of the Liquidator. – The liquidator shall have the qualifications enumerated in Section 29 hereof. He may be removed at any time by the court for cause, either *motu proprio* or upon motion of any creditor entitled to vote for the election of the liquidator.

SEC. 119. Powers, Duties and Responsibilities of the Liquidator. – The liquidator shall be deemed an officer of the court with the principal duty of preserving and maximizing the value and recovering the assets of the debtor, with the end of liquidating them and discharging to the extent possible all the claims against the debtor. The powers, duties and responsibilities of the liquidator shall include, but not be limited to:

- (a) to sue and recover all the assets, debts and claims, belonging or due to the debtor;
- (b) to take possession of all the property of the debtor except property exempt by law from execution;
- (c) to sell, with the approval of the court, any property of the debtor which has come into his possession or control;
- (d) to redeem all mortgages and pledges, and to satisfy any judgment which may be an encumbrance on any property sold by him;
- (e) to settle all accounts between the debtor and his creditors, subject to the approval of the court;
- (f) to recover any property or its value, fraudulently conveyed by the debtor;
- (g) to recommend to the court the creation of a creditors' committee which will assist him in the discharge of his functions and which shall have powers as the court deems just, reasonable and necessary; and
- (h) upon approval of the court, to engage such professionals as may be necessary and reasonable to assist him in the discharge of his duties.

In addition to the rights and duties of a rehabilitation receiver, the liquidator shall have the right and duty to take all reasonable steps to manage and dispose of the debtor's assets with a view towards maximizing the proceedings therefrom, to pay

creditors and stockholders, and to terminate the debtor's legal existence. Other duties of the liquidator in accordance with this section may be established by procedural rules.

A liquidator shall be subject to removal pursuant to procedures for removing a rehabilitation receiver.

Sec. 120. Compensation of the Liquidator. – The liquidator and the persons and entities engaged or employed by him to assist in the discharge of his powers and duties shall be entitled to such reasonable compensation as may be determined by the liquidation court, which shall not exceed the maximum amount as may be prescribed by the Supreme Court.

Sec. 121. Reporting Requirements. – The liquidator shall make and keep a record of all moneys received and all disbursements made by him or under his authority as liquidator. He shall render a quarterly report thereof to the court, which report shall be made available to all interested parties. The liquidator shall also submit such reports as may be required by the court from time to time as well as a final report at the end of the liquidation proceedings.

Sec. 122. Discharge of Liquidator. – In preparation for the final settlement of all the claims against the debtor, the liquidator will notify all the creditors, either by publication in a newspaper of general circulation or such other mode as the court may direct or allow, that he will apply with the court for the settlement of his account and his discharge from liability as liquidator. The liquidator will file a final accounting with the court, with proof of notice to all creditors. The accounting will be set for hearing. If the court finds the same in order, the court will discharge the liquidator.

(C) Determination of Claims.

SECTION 123. Registry of Claims. – Within 20 days from his assumption into office, the liquidator shall prepare a preliminary registry of claims of secured and unsecured creditors. Secured creditors who have waived their security or lien, or have fixed the value of the property subject of their security or lien by agreement with the liquidator and is admitted as a creditor for the balance, shall be considered as unsecured creditors. The liquidator shall make the registry available for public inspection and provide publication notice to creditors, individual debtors, owner/s of the sole proprietorship-debtor, the partners of the partnership-debtor and shareholders or members of the corporation-debtor, on where and when they may inspect it. All claims must be duly proven before being paid.

Sec. 124. Right of Set-off. – If the debtor and a creditor are mutually debtor and creditor of each other, one debt shall be set off against the other, and only the balance, if any, shall be allowed in the liquidation proceedings.

Sec. 125. *Opposition or Challenge to Claims.* – Within 30 days from the expiration of the period for filing of applications for recognition of claims, creditors, individual debtors, owner/s of the sole proprietorship-debtor, partners of the partnership-debtor and shareholders or members of the corporation-debtor and other interested parties may submit a challenge to a claim or claims to the court, serving a certified copy on the liquidator and the creditor holding the challenged claim. Upon the expiration of the 30-day period, the rehabilitation receiver shall submit to the court the registry of claims containing the undisputed claims that have not been subject to challenge. Such claims shall become final upon the filing of the register and may be subsequently set aside only on grounds of fraud, accident, mistake or inexcusable neglect.

Sec. 126. *Submission of Disputed Claims to Court.* – The liquidator shall resolve disputed claims and submit his findings thereon to the court for final approval. The liquidator may disallow claims.

(D) Avoidance Proceedings.

SECTION 127. *Rescission or Nullity of Certain Transactions.* – Any transaction occurring prior to the issuance of the Liquidation Order or, in case of the conversion of the rehabilitation proceedings to liquidation proceedings prior to the commencement date, entered into by the debtor or involving its assets, may be rescinded or declared null and void on the ground that the same was executed with intent to defraud a creditor or creditors or which constitute undue preference of creditors. The presumptions set forth in Section 58 hereof shall apply.

Sec. 128. *Actions for Rescission or Nullity.*

(a) The liquidator or, with his conformity, a creditor may initiate and prosecute any action to rescind, or declare null and void any transaction described in the immediately preceding paragraph.

If the liquidator does not consent to the filing or prosecution of such action, any creditor may seek leave of the court to commence said action.

(b) If leave of court is granted under subsection (a) hereof the liquidator shall assign and transfer to the creditor all rights, title and interest in the chose in action or subject matter of the proceeding, including any documentation support thereof.

(c) Any benefit derived from a proceeding taken pursuant to subsection (a) hereof, to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate.

(d) Where, before an order is made under subsection (a) hereof, the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the creditors, the order shall fix the time within which he shall do so and, in that case, the benefit derived from the proceedings, if instituted within the time limits so fixed, belongs to the estate.

(E) The Liquidation Plan.

SECTION 129. *The Liquidation Plan.* – Within three months from his assumption into office, the Liquidator shall submit a Liquidation Plan to the court. The Liquidation Plan shall, as a minimum, enumerate all the assets of the debtor, all the claims against the debtor and a schedule of liquidation of the assets and payment of the claims.

SEC. 130. *Exempt Property to be Set Apart.* – It shall be the duty of the court, upon petition and after hearing, to exempt and set apart, for the use and benefit of the said insolvent, such real and personal property as is by law exempt from execution, and also a homestead; but no such petition shall be heard as aforesaid until it is first proved that notice of the hearing of the application therefor has been duly given by the clerk, by causing such notice to be posted in at least three public places in the province or city at least ten days prior to the time of such hearing, which notice shall set forth the name of the said insolvent debtor, and the time and place appointed for the hearing of such application, and shall briefly indicate the homestead sought to be exempted or the property sought to be set aside; and the decree must show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of that fact.

SEC. 131. *Sale of Assets in Liquidation.* – The liquidator may sell the unencumbered assets of the debtor and convert the same into money. The sale shall be made at public auction. However, a private sale may be allowed with the approval of the court if: (a) the goods to be sold are of a perishable nature, or are liable to quickly deteriorate in value, or are disproportionately expensive to keep or maintain; or (b) the private sale is for the best interest of the debtor and his creditors.

With the approval of the court, unencumbered property of the debtor may also be conveyed to a creditor in satisfaction of his claim or part thereof.

SEC. 132. *Manner of Implementing the Liquidation Plan.* – The liquidator shall implement the Liquidation Plan as approved by the court. Payments shall be made to the creditors only in accordance with the provisions of the Plan.

SEC. 133. *Concurrence and Preference of Credits.* – The Liquidation Plan and its implementation shall ensure that the concurrence and preference of credits as enumerated in the Civil Code of the Philippines and other relevant laws shall be observed, unless a preferred creditor voluntarily waives his preferred right. For purposes of this chapter, credits for services rendered by employees or laborers to the debtor shall enjoy first preference under Article 2244 of the Civil Code, unless the claims constitute legal liens under Articles 2241 and 2242 thereof.

SEC. 134. *Order Removing the Debtor from the List of Registered Entities at the Securities and Exchange Commission.* – Upon determining that the liquidation has been completed according to this Act and applicable law, the court shall issue an Order approving the report and ordering the SEC to remove the debtor from the registry of legal entities.

Sec. 135. *Termination of Proceedings.* – Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the SEC, the court shall issue an Order terminating the proceedings.

(F) Liquidation of a Securities Market Participant.

SECTION 136. *Liquidation of a Securities Market Participant.* – The foregoing provisions of this chapter shall be without prejudice to the power of a regulatory agency or self-regulatory organization to liquidate trade-related claims of clients or customers of a securities market participant which, for purposes of investor protection, are hereby deemed to have absolute priority over all other claims of whatever nature or kind insofar as trade-related assets are concerned.

For purposes of this section, trade-related assets include cash, securities, trading right and other assets owned and used by the securities market participant in the ordinary course of its business.

CHAPTER VIII

PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR REHABILITATION PROCEEDINGS

(A) Banks and Other Financial Institutions Under Rehabilitation Receivership Pursuant to a State-funded or State-mandated Insurance System.

SECTION 137. *Provision of Assistance.* – The court shall issue orders, adjudicate claims and provide for other relief necessary to assist in the liquidation of a financial institution under rehabilitation receivership established by a state-funded or state-mandated insurance system.

Sec. 138. *Application of Relevant Legislation.* – The liquidation of banks, financial institutions, insurance companies and pre-need companies shall be determined by relevant legislation. The provisions in this Act shall apply in a suppletory manner.

(B) Cross-Border Insolvency Proceedings.

SECTION 139. *Adoption of Uncitral Model Law on Cross-Border Insolvency.* – Subject to the provision of Section 136 hereof and the rules of procedure that may be adopted by the Supreme Court, the Model Law on Cross-Border Insolvency of the United Nations Center for International Trade and Development is hereby adopted as part of this Act.

Sec. 140. *Initiation of Proceedings.* – The court shall set a hearing in connection with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction, upon the submission of a petition by the representative of the foreign entity that is the subject of the foreign proceeding.

Sec. 141. *Provision of Relief.* – The court may issue orders:

- (a) suspending any action to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines;
- (b) requiring the surrender of property of the foreign entity to the foreign representative; or
- (c) providing other necessary relief.

Sec. 142. *Factors in Granting Relief.* – In determining whether to grant relief under this subchapter, the court shall consider:

- (a) the protection of creditors in the Philippines and the inconvenience in pursuing their claims in a foreign proceeding;
- (b) the just treatment of all creditors through resort to a unified insolvency or rehabilitation proceeding;
- (c) whether other jurisdictions have given recognition to the foreign proceeding;
- (d) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with the manner prescribed in this Act; and
- (e) the extent that the foreign proceeding has recognized and shown deference to proceedings under this Act and previous legislation.

CHAPTER IX

FUNDS FOR REHABILITATION OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS

SECTION 143. *Funds for Rehabilitation of Government-owned and Controlled Corporations.*

– Public funds for the rehabilitation of government-owned and -controlled corporations shall be released only pursuant to an appropriation by Congress and shall be supported by funds actually available as certified by the National Treasurer.

The Department of Finance, in collaboration with the Department of Budget and Management, shall promulgate the rules for the use and release of said funds.

CHAPTER X

MISCELLANEOUS PROVISIONS

SECTION 144. *Applicability of Provisions.* – The provisions in Chapter II, insofar as they are applicable, shall likewise apply to proceedings in Chapters III and IV.

Sec. 145. *Penalties.* – An owner, partner, director, officer or other employee of the debtor who commits any one of the following acts shall, upon conviction thereof, be

punished by a fine of not more than One Million Pesos (P1 million) and imprisonment for not less than three months nor more than five years for each offense:

- (a) if he shall, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, hide or conceal, or destroy or cause to be destroyed or hidden any property belonging to the debtor; or if he shall hide, destroy, alter, mutilate or falsify, or cause to be hidden, destroyed, altered, mutilated or falsified, any book, deed, document or writing relating thereto; or if he shall, with intent to defraud the creditors of the debtor, make any payment, sale, assignment, transfer or conveyance of any property belonging to the debtor;
- (b) if he shall, having knowledge or belief of any person having proved a false or fictitious claim against the debtor, fail to disclose the same to the rehabilitation receiver or liquidator within one month after coming to said knowledge or belief; or if he shall attempt to account for any of the debtor's property by fictitious losses or expenses; or
- (c) if he shall knowingly violate a prohibition or knowingly fail to undertake an obligation established by this Act.

Sec. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases.* – This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

Sec. 147. *Application to Pending Contracts.* – This Act shall apply to all contracts of the debtor regardless of the date of perfection.

Sec. 148. *Repealing Clause.* – The Insolvency Law (Act No. 1956), as amended, is hereby repealed. All other laws, orders, rules and regulations or parts thereof inconsistent with any provision of this Act are hereby repealed or modified accordingly.

Sec. 149. *Separability Clause.* – If any provision of this Act shall be held invalid, the remainder of this Act not otherwise affected shall remain in full force and effect.

Sec. 150. *Effectivity Clause.* – This Act shall take effect 15 days after its complete publication in the *Official Gazette* or in at least two national newspapers of general circulation.



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