

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

04 JUN 30 P2:37

RECEIVED BY: 

SENATE

S No. 208

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

On July 19, 2000, the passage of RA 8799 otherwise known as the Securities Regulation Code effected the transfer of the quasi-judicial jurisdiction of the Securities and Exchange Commission to the Regional Trial Courts. For want of anything better, the courts are for the moment compelled to adopt the dated 1909 Insolvency Law, and the extremely inadequate PD 902-A.

This bill, the Corporate Recovery Act, seeks to address the need for a set of procedural rules that will govern the complex processes involved in the suspension of payments resorted to by ailing business enterprises. It defines the rights of debtors and creditors in formal debt relief proceedings and provides the guidelines that can facilitate the resolution of the proceedings.

This bill, which builds on the wealth of insights from current practice, seeks to provide fair treatment to all parties involved in a financial restructuring or rehabilitation, while maximizing the chances for the survival of the enterprise concerned. The provisions of this bill provide an ailing enterprise with four different means of relief, to wit:

- Pre-negotiated Rehabilitation
- Fast Track Rehabilitation
- Court-Supervised Rehabilitation; and
- Dissolution – Liquidation

The experience of the economic crisis of 1997 and 1998 showed the immense waste of resources that get tied up in long-drawn out proceedings that follow corporate failure. In many cases, the proceedings drag on even to the extent of seriously threatening the survival of the subject companies. In providing a more orderly framework for these proceedings, this bill is an important support mechanism needed for Philippine entrepreneurship to survive the tortuous competitive environment of the new millennium

In view of the foregoing, early passage of this bill is earnestly requested.


SERGIO OSMEÑA III
Senator

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AN ACT
PROVIDING FOR THE RECOVERY OF FINANCIALLY DISTRESSED
ENTERPRISES AND THE RESOLUTION OF THEIR INDEBTEDNESS

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

1 **SECTION 1. Short Title.** – This Act shall be known as the “Corporate
2 Recovery Act.”

3 **SEC. 2. Declaration of Policy.** - It shall be the policy of the State to
4 encourage a juridical debtor and its creditors to collectively and realistically resolve
5 and adjust competing claims and property rights under the supervision and approval
6 of a court when the debtor can no longer pay its debts as they come due or when the
7 debtor has become insolvent. Such resolutions shall respect the differing priorities
8 amongst claims, and where possible, attempt to maintain the debtor's operations,
9 even though it may come under different ownership or a different corporate entity as
10 part of the resolution. When such resolutions are not feasible, it is in the interest of
11 the State to allow a speedy liquidation of the juridical debtor's assets and the payoff of
12 its debts to the extent possible.

13 **SEC. 3. Definition of Terms.** - As used in this Act, the term:
14 a) “Administrative expense” shall refer to those expenses incurred after
15 commencement of proceedings that are in the ordinary course of business or that
16 are authorized or mandated under this Act.

- 1 b) "Claim" shall refer to a right to payment or a right to an equitable remedy that
2 results in payment, whether or not such right is the subject of a judgment or is
3 liquidated, unliquidated, fixed, contingent, unmatured, disputed or undisputed.
- 4 c) "Commencement of proceedings" shall refer to the date on which the Court issued
5 the order commencing the proceedings.
- 6 d) "Creditor" shall refer to a juridical entity or physical person holding a claim against
7 the debtor.
- 8 e) "Debtor" shall refer to a juridical entity organized in the Philippines unless
9 specifically excluded by a provision in this Act.
- 10 f) "Encumbered property" shall refer to property securing the payment of a claim,
11 regardless of whether the property is classified as movable or immovable or
12 whether the lien against the property is statutory or consensual.
- 13 g) "General unsecured creditor" shall refer to a creditor whose claim or a portion
14 thereof is neither secured, preferred, nor subordinated under this Act.
- 15 h) "Individual notice to creditor and shareholders" shall refer to notification by the
16 conservator to creditors and shareholders who have filed a notice or appearance in
17 accordance with this Act.
- 18 i) "Insider" shall refer to a juridical entity's director, officer, or other person in control
19 of the juridical entity; a partner of the juridical entity in cases when the juridical
20 entity is a partnership, a shareholder of the juridical entity holding more than ten
21 percent (10%) of the shares thereof, or those persons related to these persons by
22 consanguinity or affinity within the fourth civil degree; a partnership in which the
23 juridical entity is a general partner, or a juridical entity that is an affiliate of the
24 juridical entity in question.
- 25 j) "Involuntary proceedings" shall refer to judicial proceedings commenced by the
26 Court's acceptance of a petition filed under this Act.
- 27 k) "Publication notice" shall refer to notice through publication in a newspaper of
28 general circulation for two (2) consecutive weeks.

1 l) "Secured creditor" shall refer to a creditor having a claim for repayment of a debt
2 secured by a pledge when the creditor continues to possess the property, or
3 secured by a statutory lien or mortgage registered with the appropriate registry of
4 property when the property is in the possession of the debtor.

5 m) "Shareholder" shall refer, in addition to a holder of shares of a corporation, to a
6 member of a non-stock corporation or association, or a partner in a partnership.

7 **SEC. 4. Exclusions.** - No bank, licensed securities market participant,
8 insurance company, or national and/or government unit may be a debtor under this
9 Act unless a provision herein provides for such application

10 For purposes of this Section,

11 (a) "Bank" shall refer to any bank or quasi-bank that is potentially or actually
12 subject to conservatorship, receivership, or liquidation proceedings under
13 the New Central Bank Act or successor legislation.

14 (b) "Insurance Company" shall refer to those companies that are potentially or
15 actually subject to insolvency proceedings under the Insurance Code.

16 (c) "Licensed securities market participant" shall refer to a licensed exchange,
17 broker, dealer, underwriter, transfer agent, salesman or other persons
18 transacting securities who is subject to mandatory investor protection fund
19 regulations.

20 **SEC. 5. Court.** - The Court or Courts for hearing and resolving cases brought
21 under this Act shall be designated by the Supreme Court.

22 **SEC. 6. Power of Court.** Upon motion or motu proprio, the Court may issue
23 any order or judgment that is necessary to carry out the provisions in this Act. Parties
24 that are granted relief under such orders shall be entitled to immediate execution
25 thereof unless such orders are restrained or enjoined by the Court of Appeals or the
26 Supreme Court.

27 **SEC. 7. Procedural Rules.** - The Supreme Court may promulgate rules of
28 practice, pleading and procedure to substitute for or adopt any provisions in this Act

1 that it determines to be procedural in nature: Provided, however, That such rules
2 shall not restrict, enlarge or modify any substantive rights established by this Act.

3 **SEC. 8. Substantive and Procedural Consolidation.** - Each juridical entity
4 shall be considered in separate cases under the proceedings in this Act. The Assets
5 and liabilities of a debtor may not be commingled or aggregated with those of another
6 under these proceedings: Provided, however, That the Court may allow for procedural
7 consolidation of cases to allow for a more efficient and speedy disposition of
8 proceedings under this Act.

9 **SEC. 9. Required Service on Parties.** - Service of pleadings and any other
10 papers filed with the Court shall be deemed served on the creditors upon the service
11 of such on the conservator or liquidator that is appointed pursuant to this Act. Service
12 upon shareholders shall be deemed complete upon service on the official authorized
13 to accept service for the debtor: Provided, however, That a party filing a pleading
14 concerning a particular property interest of the debtor or a claim against the debtor
15 shall serve, in addition to the conservator or liquidator, the parties making the claim of
16 having a particular ownership or security interest in the property that is the subject of
17 the dispute.

18 The Court may establish reasonable requirements for distribution of documents
19 in electronic form or otherwise to the creditors and shareholders through the
20 conservator or liquidator.

21 **SEC. 10. Collective Decision-making of Creditors and Shareholders.** -
22 Any provision in this Act that refers to approval, rejection or other collective action by
23 the creditors (or to a class or sub-group of a class thereon) shall refer to the results of
24 a process by which at least half of the creditors (or a class or sub-group of a class
25 thereof) have manifested such a decision either through affidavits or the signed
26 minutes of a meeting. The means of counting creditors for such decisions shall be
27 solely by amount of claim unless specifically stated otherwise in this Act. Decisions of
28 shareholders shall be made by majority vote according to the relevant provisions of

1 the Corporation Code or Civil Code provisions on partnership that are not inconsistent
2 with this Act.

3 **SEC. 11. Creditors' Representatives.** - Creditors may designate
4 representatives to vote or otherwise act on their behalf by filing notice of such
5 representation with the Court and serving a copy on the conservator or liquidator.

6 **SEC. 12. Liability of directors and officers.** - Directors and officers of a
7 debtor that distributes proceeds from the liquidation of a debtor under proceedings
8 other than those described under this Act when the debtor's funds are insufficient to
9 repay all creditors claims in full shall be liable for any claims of creditors that remain
10 unpaid after the distribution.

11 **CHAPTER II. INITIATION OF PROCEEDINGS**

12 **Sub-Chapter 1. Voluntary Proceedings**

13 **SEC. 13. Petition to Initiate Voluntary Proceedings.** - A debtor that
14 foresees the inability of paying its obligations as they come due, or that believes itself
15 to be insolvent may initiate voluntary proceedings under this Act by filing a petition
16 with the Court. In order to establish an entitlement to relief under this Act, the
17 debtor's petition shall

- 18 (a) identify the debtor, its principal activities and addresses;
19 (b) state the fact of and the cause of the debtor's insolvency or inability to pay
20 its obligation as they become due;
21 (c) specifically state the relief sought pursuant to Chapter IV of this Act;
22 (d) Include the attachments as required by this Act.

23 **SEC. 14. Attachments to the Petition.** - The following documents shall be
24 filed with the petition:

- 25 (a) a verified resolution by the appropriate decision-making body of the debtor
26 authorizing the filing of the petition and the initiation of the case;
27 (b) the audited annual financial statements of the debtor from the three years prior
28 to the filing of the petition;

1 (c) The interim financial statement as of the end of the month prior to the filing of
2 the petition;

3 (d) A schedule of liabilities indicating the name and address of each creditor, the
4 amount of each claim as to principal, interest, or penalties due as of the date
5 of filing, and the status of the claim under the provisions on priorities of claims
6 under this Act;

7 (e) An inventory of assets stating, with reasonable specificity, the nature of each
8 asset, the location and condition thereof, the book value or estimated market
9 value thereof, any applicable ownership registration data, the encumbrances
10 or other claims thereon, and the identities and addresses of the lien holders or
11 other parties with interests therein. The inventory shall include a schedule of
12 accounts receivable, indicating the nature and amount of each account, the
13 persons from whom due, and the dates of maturity.

14 (f) Copies of certificates of title to the debtor's property;

15 (g) A schedule of payments and dispositions of assets which the debtor executed
16 within a period of one hundred and eighty (180) days prior to the filing if the
17 counter-party is not an insider of the debtor;

18 (h) A detailed schedule of the cash flow of the debtor for the ninety (90) days from
19 the date that the petition is filed, taking into account the expenses likely to be
20 incurred in connection with proceedings under this Act.

21 (i) An affidavit of a responsible officer of the debtor verifying the truth of the
22 matters alleged in the petition and the accuracy of the information contained in
23 the attachments;

24 (j) Other documents that may be required under this Act depending on the form of
25 relief requested.

26 **SEC. 15. Commencement of Proceedings.** - Proceedings shall commence
27 upon the Court's issuance of an order finding the petition and attachments to be
28 reasonably sufficient in form and substance. Such an order shall include the elements
29 set forth in Section 21 of this Act. It shall also, where applicable, require that the

1 debtor provide documents not included with its petition within a reasonable time
2 period.

3 **Sub-Chapter 2. Involuntary Proceedings**

4 **SEC. 16. *Circumstances Necessary to Initiate Involuntary Proceedings.* -**

5 A creditor shall be entitled to initiate voluntary proceedings against a debtor if:

- 6 (a) he and at least two other creditors of the debtor have undisputed or
7 adjudicated claims, the required payments on which have remained for
8 more than sixty (60) days; or
- 9 (b) a creditor has initiated foreclosure proceedings against the debtor that will
10 prevent the debtor from paying its debts as they come due or will render it
11 insolvent.

12 **SEC. 17. *Petition to Initiate Involuntary Proceedings.* -** In order to establish
13 an entitlement to relief under this Act, the creditor's petition shall:

- 14 (a) Identify the debtor, its principal activities, and its address;
- 15 (b) State the circumstances sufficient to support a petition to initiate involuntary
16 proceedings;
- 17 (c) Specifically state the relief sought under Chapter IV of this Act.

18 **SEC. 18. *Preliminary Proceedings on the Sufficiency of a Petition.* -** The
19 procedures for service of summons on the debtor as a respondent, preliminary
20 remedies, responsive pleadings, and determination of the existence of a viable cause
21 of action under this sub-chapter shall be regulated by the Rules of Court.

22 **SEC. 19. *Basis for Initiating Involuntary Proceedings.*** The Court shall
23 initiate involuntary proceedings upon determining that the debtor is or will be unable to
24 meet its debts as they come due or has or will imminently become insolvent. Upon
25 establishment of the condition in sub-section (a) of Section 16 of this Act, there shall
26 be a disputable presumption that the debtor cannot meet its debts as they come due.
27 The order containing the Court's finding shall also include the elements set forth in
28 Section 24 of this Act.

29 **CHAPTER III - ADMINISTRATION OF THE PROCEEDINGS**

1 **Sub-Chapter 1. The Debtor Under Proceedings**

2 **SEC. 20. *Effect of Commencement of Proceedings.*** - The Court's issuance
3 of an order commencing proceedings (either voluntary or involuntary) shall:

4 (a) vest in the conservator the right to management and control the debtor and
5 to exercise all rights of the debtor's board of directors and management to
6 manage the debtor.

7 (b) Vest the conservator with the right to review and obtain all records to which
8 the debtor's management had access, including bank accounts of the
9 debtor;

10 (c) Impose upon the debtor's management and directors the legal obligation to
11 provide the conservator with access to and possession of all records to
12 which the debtor's management and directors had access;

13 (d) Suspend all legal proceedings against the debtor in other courts on
14 grounds of lis pendens;

15 (e) Suspend all actions to enforce any judgments against the debtor;

16 (f) Render null and void the results of any extra-judicial activity to seize
17 property, sell encumbered property, or otherwise attempt to collect on or
18 enforce a claim against the debtor after the commencement of proceedings
19 unless otherwise allowed in this Act;

20 (g) Render null and void any setoff after commencement of proceedings of any
21 debt owed to the debtor by any of the debtor's concerns;

22 (h) Render null and void the perfection of any lien against the debtor's property
23 after the commencement of proceedings;

24 (i) Consolidate the resolution of all legal proceedings by and against the
25 debtor to the Court: Provided, however, That the Court may allow the
26 continuation of cases in other courts where the debtor had initiated the suit.

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

1 The Court may order, through its injunctive and contempt powers, the transfer
2 of documents, return of property, the annotation of titles and other relevant
3 documents, or provide for other appropriate relief to address any violations of this
4 Section or to protect the interests of creditors and shareholders.

5 Individuals who refuse to accede to request for documents or property
6 described in this Section shall be liable for indirect contempt of Court, as well as all
7 resulting costs and attorneys' fees.

8 **SEC. 21. *Exception to Prohibition of Actions Against the Debtor with***
9 ***regard to Securities.*** - The prohibition in Section 20 of this Act shall not apply to the
10 actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to
11 a securities pledge or margin agreement.

12 **SEC. 22. *Non-applicability of Suspension Order to Appeals and***
13 ***Specialized Proceedings.*** - The suspension order shall not apply to appeals cases
14 filed at the Court of Appeals or the Supreme Court prior to commencement of
15 proceedings: Provided, That the execution of any judgment resulting from such appeal
16 or remand for further proceedings shall be directed to the Court.

17 The Court may exclude from its suspension order cases pending or filed at a
18 specialized court or a quasi-judicial agency when it determines that the court of
19 agency is capable of resolving the claims more quickly, fairly and efficiently than the
20 Court: Provided, That the execution of any judgment of such court of agency shall be
21 referred to the Court and shall be treated as a non-disputed claim.

22 **SEC. 23. *Application of Suspension to Government Financial Institutions***
23 - The provisions in the preceding Sections shall apply to government financial
24 institutions as creditors, notwithstanding provisions in their charters to the contrary.

25 **SEC. 24. *Order Commencing Proceedings.*** - The order commencing
26 proceedings (either voluntary or involuntary) shall :

27 (a) identify the debtor, its principal activities, and its address;

28 (b) State the grounds for initiating the proceedings;

1 (c) State the relief sought under this Act and any requirements or procedures
2 particular to the relief sought;

3 (d) State the legal effects of the commencement of the proceedings;

4 (e) Appoint a conservator, or liquidator when appropriate;

5 (f) Summarize the requirements and deadlines for creditors to establish their
6 claims against the debtor;

7 (g) Indicate the location(s) at which documents regarding the debtor and the
8 proceedings under this Act may be reviewed and copied;

9 The conservator shall publish the order in a newspaper of general circulation
10 for two (2) consecutive weeks, the date of the first publication to be no later than five
11 business days after issuance of the order.

12 **SEC. 25. *Property of the Debtor Under the Control of Management of***
13 ***Third Parties.*** - Third parties possessing or controlling property of the debtor may
14 not sell or otherwise convey it to persons other than the debtor, unless otherwise
15 specified by the conservator. Upon written request of the conservator and after
16 payment of any claims secured by possessory pledges or mechanic's liens, such third
17 parties shall transfer possession or control of such to the latter: Provided, however,
18 That the conservator may arrange to have the third party continue to possess,
19 manage, or dispose of the property in such an arrangement that would more likely
20 preserve and/or increase the value of the property in question or the total value of the
21 assets held by the debtor.

22 **SEC. 26. *Unencumbered Property that May be Sold or Otherwise***
23 ***Transferred During the Proceedings.*** - The Court may rescind any transfers of the
24 debtor's unencumbered property or encumbrances thereof by the debtor or its agents
25 that occur after the commencement of the proceedings and are outside the ordinary
26 course of business: Provided, however, That the following transactions may be
27 implemented upon a decision of the Court, after notice and hearing:

1 (a) Payments to victims of quasi-delicts upon a showing that the claim of the
2 quasi-delict is valid and the debtor has insurance to indemnify the debtor for
3 the payments made;

4 (b) Sales of the debtor's unencumbered property if such is in the interest of
5 administering the debtor and facilitating the preparation and
6 implementation of a rehabilitation plan;

7 (c) mortgages or pledges or property in order to provide a substitute lien under
8 Sections 28 and 29 of this Act;

9 (d) payments made to repurchase property of a debtor that is auctioned off in a
10 judicial or extra-judicial sale under Section 27 of this Act; or

11 (e) payments made to reclaim property of the debtor held pursuant to a
12 possessor's pledge or mechanic's lien.

13 **SEC. 27. Foreclosures on Encumbered Assets of the Debtor.** - The Court,
14 after notice and hearing, may allow a foreclosure on encumbered property of the
15 debtor and its sale according to applicable Rules of Court and relevant legislation if
16 such foreclosure is in the best interest of the creditors and shareholders of the debtor
17 or if such foreclosure is specifically authorized by this Act.

18 **SEC. 28. Sale or Disposal of Encumbered Property or Property of Others**
19 **in Trust or Otherwise Held by the Debtor.** - No provision in this Act shall be read
20 as to create a defense against estafa or other criminal charges or civil claims against
21 persons responsible for the sale or disposal of encumbered property or property of
22 others held by the debtor: Provided, however: That the conservator may sell or
23 dispose of such property if:

24 (a) such sale or disposal is necessary for the continued operation of the
25 debtor's business;

26 (b) the conservator has made arrangements to provide a substitute lien or
27 ownership right that provides an equal level of security for the country-
28 party's claim or right; and

1 (c) the Court, after notice and hearing, has approved the sale or disposal of
2 such property according to the criteria in sub-sections (a) and (b) of this
3 Section.

4 **SEC. 29. *Treatment of Rapidly Depreciating and Encumbered Property***

5 ***Owned by the Debtor.*** - Upon the application of a creditor whose claim is secured by
6 movable property subject to potentially rapid depreciation, the Court shall, after
7 notice and hearing, order the conservator to either:

8 (a) allow the property to be foreclosed upon by the secured creditor;

9 (b) convey to the secured creditor a lien on substitute property of the debtor if
10 such is acceptable to the creditor and is not opposed by any senior lien
11 holders of such property, of it such is not available;

12 (c) convey to the secured creditor a lien on the residual funds from the sale of
13 any encumbered property during the proceedings.

14 **SEC. 30. *Rescission of Pre-commencement Transactions.*** - Transactions

15 that have occurred prior to the commencement of proceedings may be rescinded by
16 the Court on grounds that they were executed with an intent to defraud creditors or if
17 it finds evidence sufficient to show such a design by the debtor and the third party. A
18 disputable presumption of such design shall arise if the transaction:

19 (a) provided unreasonably inadequate consideration to the debtor and is
20 executed one hundred and eighty (180) days prior to the commencement
21 of proceedings if the third party is not an insider of the debtor;

22 (b) involves the payment of a dividend to shareholders executed in violation of
23 the Corporation Code, the provisions in the debtor's corporate charter or
24 by-laws or other agreements of the debtor;

25 (c) involves an accelerated payment of a claim to a creditor one hundred and
26 eighty (180) days prior to the commencement of proceedings if the creditor
27 is an insider of the debtor and ninety (90) days prior to the commencement
28 of proceedings if the creditor is not an insider of the debtor.

1 Provided, however, That nothing in this Section shall prohibit the Court from
2 rescinding a transaction on other grounds provided by relevant legislation and
3 jurisprudence: and Provided, further, That the provisions of the Civil Code on
4 rescission shall apply to these transactions in a suppletory manner.

5 **SEC. 31. *Post-commencement Interest.*** - Interest on claims owed by the
6 debtor as of commencement of proceedings shall accrue at the pre-default rates
7 established in the debtor's contract: Provided, however, That secured creditors may
8 elect instead to freeze their claims as of the date of the commencement of
9 proceedings and be paid a use charge based on the outstanding balance or the value
10 of the encumbered property (whichever is less) calculated at a rate equivalent to that
11 paid on 91-day government securities sold on or around the date of commencement of
12 proceedings. A failure by secured creditors to notify the conservator of such election
13 within thirty (30) days shall be deemed a waiver of this right.

14 **SEC. 32. *Post-commencement Credit*** - With the concurrence of the
15 committee of general unsecured creditors of the debtor and the approval of the Court,
16 the conservator may:

- 17 (a) enter into credit arrangements on behalf of the debtor, the payments under
18 which shall be considered an administrative expense; or
19 (b) enter into credit arrangements on behalf of the debtor, secured by
20 mortgages of its unsecured property.

21 **SEC. 33. *Treatment of Employees.*** - The conservator may dismiss the
22 debtor's employees from employment. In such cases, there shall be a disputable
23 presumption that the grounds of such retrenchment shall be to prevent losses.
24 Claims of separation pay for months worked prior to commencement of proceedings
25 shall be considered a pre-commencement claim and shall be added to the registry of
26 claims established in Sub-chapter 2 of this Chapter. Claims for salary and separation
27 pay for work performed after commencement of proceedings shall be an
28 administrative expense.

1 **SEC. 34. *Treatment of Lessors and Other Counter-Parties in Contract.* -**

2 Unless specifically cancelled by a court decree prior to issuance of the order
3 commencing proceedings, all contracts of the debtor with creditors and other third
4 parties shall be deemed to continue in force, regardless of pre-commencement
5 defaults by the debtor provided that the debtor makes payments for such services
6 and goods that are provided after commencement of proceedings.

7 Within sixty (60) days following commencement of the proceedings, the
8 conservator shall notify each contractual counter-party of whether the debtor is
9 confirming or breaching the particular contract. Contractual obligations of the debtor
10 arising during this period, and afterwards for confirmed contracts shall be an
11 administrative expense. Contracts now confirmed by the required deadline shall be
12 considered breached. Obligations of the debtor for damages and other penalties
13 arising as the result of the conservator's election to breach shall be considered a pre-
14 commencement claim against the debtor and shall be added to the registry of claims
15 established in sub-Chapter 2 of this Chapter.

16 **SEC. 35. *Opportunity for Counter-party in Contract to Cure after***
17 ***Receiving Notice of Confirmation by the Conservator.* -** Any counter-party in a
18 contract with the debtor shall have a reasonable period of time to cure any breaches
19 of its obligations to the debtor that occurred subsequent to commencement of the
20 proceedings upon receiving notice of the conservator's confirmation of the contract.

21 **Sub-Chapter 2. Determination of Claims**

22 **SEC. 36. *Determination of Tax Liabilities.* -** The debtor shall, as soon as
23 reasonably possible, file a tax return for determination of tax liabilities as of
24 commencement of proceedings.

25 **SEC. 37. *Establishment of a Preliminary Registry of Claims.* -** Within
26 twenty (20) days of appointment, the conservator shall establish a preliminary registry
27 of claims. Such registry shall state for each claim:

28 (a) the name and reasonable contract details of the creditors;

- 1 (b) the amount of the claim as of the date of commencement of proceedings, if
2 the claim is not unliquidated;
- 3 (c) the extent to which it is secured by a lien on the debtor's property as of the
4 date of the commencement of the proceedings;
- 5 (d) its preference classification among those established by Sub-chapter 4 of
6 Chapter 4 of this Act;
- 7 (e) whether it is undisputed, disputed, contingent or unliquidated;
- 8 (f) the basis of the claim and a reference to the underlying documents
9 supporting the claim of the dispute thereof.

10 The preliminary registry of claims shall subtotal the disputed, undisputed, and
11 contingent claims for each preference class, including an estimate of unpaid
12 administrative expenses that will have accrued by the close of the proceedings.
13 Records of the claim kept in the normal course of business by the debtor shall be
14 prima facie evidence of an undisputed claim and will be the basis for its inclusion in
15 the preliminary registry of claims. Where appropriate, the conservator shall divide a
16 claim into secured and unsecured classes depending on the estimated value of the
17 encumbered property.

18 Upon completion of the registry, the conservator shall make it available for
19 public inspection and provide publication notice to creditors and shareholders on
20 where and when they may inspect it.

21 **SEC. 38. Procedure for Supplementing the Preliminary Registry of**
22 **Claims.** - Any person may file an application to the conservator to recognize a claim
23 against the debtor within twenty (20) days after the second date of publication notice
24 that the preliminary registry of claims has become available.

25 **SEC. 39. Procedures for Determining Disputed and Undisputed Claims.** -
26 Within thirty (30) days from the expiration date for supplementing the preliminary
27 registry of claims, creditors, shareholders and other interested parties may submit a
28 challenge of a claim or claims to the Court, serving a certified copy on the conservator
29 and the challenged creditor. Such challenge shall set forth with reasonable specificity

1 the basis therefor. Upon the expiration of the thirty (30) days challenge period, the
2 conservator shall submit to the Court the registry of claims containing the undisputed
3 claims that have not been subject to challenge. Such claims shall become final upon
4 the filing of the register and may be subsequently set aside only on grounds of fraud,
5 accident, mistake or excusable neglect.

6 **SEC. 40. Procedure for Adjudicating Disputed, Challenged, and**
7 **Unliquidated Claims.** - Decisions of the conservator regarding a claim may be
8 appealed to the court. In such disputes, the parties shall be the conservator and the
9 disputing creditor or the debtor (in cases where a claim is alleged to be wrongfully
10 allowed): Provided, however, That any creditor or other party who might be
11 prejudiced by the allowance or disallowance of the claim may intervene in the
12 proceeding.

13 **SEC. 41. Procedure for Appealing Decisions of the Conservator**
14 **Regarding Disputed, Challenged, and Unliquidated Claims.** - The procedures for
15 appealing the decisions of the conservator shall be governed by applicable Rules of
16 Court.

17 **SEC. 42. Estoppel of Secured Creditors Regarding Overvaluation of**
18 **Their Encumbered Property.** - A secured creditor claiming a full or partial security
19 shall be estopped from claiming as an unsecured creditor the difference between the
20 claimed and realized value of the encumbered property if the amount realized from a
21 sale of the encumbered property fails to cover the claimed or attributed value thereof.
22 Such amount shall be a subordinated claim under Section 106 of this Act.

23 **SEC. 43. Estimation of Claims for Purposes of Voting or Serving on a**
24 **Creditors' Committee.** - Upon request of a creditor or shareholder, the Court shall
25 after notice and hearing, estimate a disputed, challenged, or unliquidated claim for
26 determination of the creditor's rights in participating in collective decision-making of
27 creditors. Provided, however, That any creditor who might be prejudiced by the
28 estimation of the claim may participate in the proceedings.

29 **Sub-Chapter 3.**

1 **The Conservator and the Unsecured Creditor's Committee**

2 **SEC. 44. *Who May Serve as Conservator.*** - Any individual with the
3 following qualifications may serve as a conservator:

4 (a) expertise and acumen to manage and operate a business similar in size
5 and complexity as that of the debtor under the circumstances called for
6 depending on the particular relief requested.

7 (b) Knowledge in management, finance and rehabilitation of distressed
8 companies;

9 (c) General familiarity with the provisions of this Act and the rights and duties
10 of a conservator thereunder;

11 (d) Absence of any criminal record or evidence of questionable moral
12 character;

13 (e) Willingness and ability to file a bond in such amount as may be determined
14 by the Court.

15 A group of individuals who combine to meet the above qualifications, or a
16 juridical entity with employees that combine to meet the above qualifications may
17 serve as a conservatorship committee or as a conservator, respectively.

18 **SEC. 45. *Conflicts of Interest.*** - No individual may serve as conservator,
19 perform conservatorship functions as an employee of a conservator, or serve on a
20 conservatorship committee if he has a conflict of interest: Provided, however, That
21 conflicts of interest that might compromise the conservator's duty to the debtor may
22 be waived by vote of the debtor's board of directors, and conflicts of interest that
23 might compromise the conservator's duties toward the creditors or shareholders may
24 be waived by a simple majority decision of the disinterested parties.

25 For purposes of this section, a conservator, a member of a conservatorship
26 committee or an employee of a juridical entity serving as a conservator shall have a
27 conflict of interest if:

28 (a) he is a creditor or stockholder of the debtor;

29 (b) he is engaged in a competing line of business as the debtor;

1 (c) he is, or was, within two (2) years prior to the filing of the petition, a
2 director, officer or employee of the debtor or any of its present creditors; or

3 (d) he is, or was within two (2) years prior to the filing of the petition, the
4 auditor, accountant of the debtor, or a director, officer or employee thereof;

5 (e) he is, or was within two (2) years prior to the filing of the petition, an
6 underwriter of the outstanding securities of the debtor, or a director, officer
7 or employee thereof;

8 (f) he is related by consanguinity or affinity within the fourth civil degree to the
9 individuals enumerated in this Section; or

10 (g) he has any other direct or indirect material interest in the debtor or any
11 creditor sufficient to cause reasonably based concern that such interest
12 would compromise impartiality or diligence in performing conservatorship
13 duties.

14 **SEC. 46. *Appointment of a Conservator.*** - The conservator shall be
15 appointed by the Court: Provided, however, That the Court shall appoint as
16 conservator any qualified individual whose nomination is supported by more than fifty
17 percent (50%) of the secured creditors and general unsecured creditor, if evidence of
18 such is submitted with the petition or by a manifestation to the Court prior to the
19 conservator's appointment.

20 **SEC. 47. *Rights and Duties of a Conservator.*** - Subject to the control of the
21 Court, the conservator shall administer and preserve the property of the debtor during
22 the pendency of the proceedings, for purposes of protecting the interests of the
23 creditors and shareholders thereof, taking into account their rights as determined by
24 this Act, the rules of procedure of the Court, and other applicable laws: Provided,
25 however, That absent evidence of circumstances justifying more direct management,
26 the rights and responsibilities of administering and preserving the assets of the debtor
27 shall be delegated to the debtor's management.

28 The conservator shall further be deemed an officer of the Court tasked with
29 facilitating the resolution of the various rights of the creditors and shareholders.

1 The Conservator shall not be subject of any action, claim or demand in
2 connection with any act done or omitted to be done by him in good faith in the
3 exercise of his functions and in connection with the exercise of his powers conferred
4 by this Act or other actions duly approved by the Court.

5 **SEC. 48. Duty to Report on Steps Taken to Protect the Value of**
6 ***Encumbered Property and Property of Others.*** - On a monthly basis, or according
7 to a schedule approved by the Court, the conservator shall report to the Court and
8 interested parties the steps taken to maintain the value of encumbered property and
9 property of others held by the debtor during the course of the proceedings.

10 **SEC. 49. Duty to Act as Service Agent for Parties Making an Appearance.**
11 - The conservator shall serve as the agent for receiving service of all pleadings and
12 other papers filed in connection with the proceedings under this Act and shall keep a
13 complete and accurate record of all pleadings filed during the proceedings as well as a
14 summary log describing each pleading. The conservator shall immediately deliver, by
15 messenger, mail, fax or electronic means to all parties making an appearance copies
16 of documents (or notice of their availability for inspection and copying) filed with the
17 Court and shall file with the Court an affidavit of service to this effect. The
18 conservator may charge a reasonable fee for this service, the rates for which are to be
19 approved by the Court: Provided, however, That such notice shall be free of charge if
20 the creditor consents to notice by electronic mail and submits a valid electronic mail
21 address as part of its notice of appearance.

22 **SEC. 50. Suspension of Cases in Other Courts.** - The conservator shall
23 have the right and duty in pending cases against the debtor in other courts to appear
24 on behalf of the debtor and move to have such cases suspended pending the
25 resolution of the proceedings in the Court.

26 **SEC. 51. Recording of Pending Proceedings at Property Registration**
27 ***Offices.*** - The conservator shall take all reasonable steps to preserve the rights of
28 the debtor through submissions to the applicable land and property registries in
29 accordance with applicable legislation: Provided, That no such actions shall diminish

1 or otherwise compromise the rights of claimants with valid, prior-registered liens
2 against such property.

3 **SEC. 52. Removal of a Conservator.** - The conservator may be removed by
4 a decision of the Court for cause, or regardless of cause, by a decision supported by
5 at least five of the seven members of the general unsecured creditors' committee.

6 **SEC. 53. Employment of Professionals.** - Upon approval of the Court, and
7 after notice and hearing, the conservator may employ specialized professionals and
8 other experts to assist him in the performance of his duties, who shall be considered
9 either employees or independent contractors of the conservator. Such individuals
10 shall enjoy rights of the conservator to the extent such is delegated to them.

11 **SEC. 54. Compensation and Terms of Service.** The conservator and his
12 direct employees or independent contractors shall be entitled to compensation for
13 reasonable fees and expenses from the debtor according to terms approved by the
14 Court after notice and hearing. Prior to such hearing, the conservator and his direct
15 employees shall be entitled to reasonable compensation on the grounds of quantum
16 merit. Such costs shall be an administrative expense.

17 **SEC. 55. General Unsecured Creditors' Committee.** Unless otherwise
18 provided for in this Act, the Court shall appoint a committee of seven general
19 unsecured creditors that have the largest such claims against the debtor and that are
20 willing to serve in such capacity.

21 **SEC. 56. Rights of the General Unsecured Creditors' Committee.** The
22 unsecured creditors' committee shall have the right to:

23 (a) object to petitions for post-commencement financing requested by the
24 conservator;

25 (b) review the conservator's records in connection with the administration of
26 the debtor;

27 (c) remove the conservator from his position in accordance with the
28 procedures in this Act;

29 (d) prepare a rehabilitation plan if so required under this Act; and

(e) appoint one attorney to represent the legal interests of the general unsecured creditors, the reasonable costs of which shall be reimbursable from the debtor as an administrative expense.

CHAPTER IV - REMEDIES

Sub-Chapter 1. Fast Track Rehabilitation

SEC. 57. Default Relief. - The debtors and creditors shall be limited to relief under this sub-chapter unless:

- (a) the debtor has initiated voluntary proceedings under this Act seeking relief under Sub-Chapter 3 of this Chapter;
- (b) the debtor is a non-stock corporation or a partnership or
- (c) more than half of the secured creditors request conversion to relief under sub-chapter 2 of this Chapter within thirty days of notice of commencement of proceedings.

SEC. 58. Presentation and Approval of Plan. Within thirty (30) days of commencement of proceedings, the conservator shall submit a time bound plan for implementing the relief allowed under this sub-chapter, serving individual notice on creditors and shareholders that a plan is available to them for review and comment.

The Court shall set a hearing on the plan no later than thirty (30) days from the date of notice of its submission. The plan shall be approved by the Court no later than ten (10) days after the hearing unless the plan fails to provide sufficient detail as to how it will be implemented or if it violates the provisions of this Act.

SEC. 59. Establishment and Capitalization of a Subsidiary of the Debtor.

- The conservator shall establish a subsidiary corporation (NewCo) whose shares shall be issued to be debtor in the form of a single class of common stock: Provided, however, That five (5) of the issued shares may be issued to nominee holders/incorporators, one of whom shall be the conservator. The number of shares issued shall equal the amount of indebtedness of the debtor represented by its disputed and undisputed claims reflected in the registry of claims. The par value of each share shall be one peso: Provided, however, That the debtor may issue no par

1 value shares if the amount of the indebtedness exceeds the estimated value of the
2 debtor's assets.

3 The consideration for the shares shall be the property of the debtor, including
4 its non-rejected leasehold and contractual rights and obligations. Contractual
5 provisions prohibiting such transfers or assignments shall be deemed null and void:
6 Provided, That encumbered property shall be transferred to NewCo subject to
7 existing liens.

8 **SEC. 60. *Non-requirement of Approval of Shareholders.*** - Notwithstanding
9 the provisions of the Corporate Code, the debtor, through the conservator, may
10 transfer all or substantially all of the assets of the debtor to NewCo without the
11 approval of the debtor's shareholders.

12 **SEC. 61. *Issuance of Bonds.*** - The conservator may also arrange for the
13 issuance of bonds by NewCo to the debt: Provided, That the total nominal value of
14 such bonds shall not exceed twenty percent (20%) of the debt of the debtor and the
15 monthly payments on which shall not exceed twenty percent (20%) of the monthly
16 payment obligations of the debtor at the time of commencement of proceedings:
17 Such bonds may be secured by liens on property of NewCo. Notwithstanding any
18 contractual prohibitions or regulations to the contrary, the conservator may establish
19 and register liens on encumbered property of NewCo: Provided, That such liens are
20 junior to pre-existing liens.

21 **SEC. 62. *Offer to Current Shareholders.*** - In cases where the debtor had
22 initiated voluntary proceedings, the shareholders of the debtor shall have the option
23 of purchasing up to twenty percent (20%) of the shares of NewCo, prior to their
24 public sale. The purchase price of the shares shall be equal to twenty percent (20%)
25 of the total disputed and undisputed claims. The expiration date for receiving offers
26 shall be no later than sixty (60) days from approval of the plan. Each purchase offer
27 shall be combined with the offer to tender at least twenty percent (20%) of the shares
28 of the debtor. In cases where more than one offer is tendered, the winner of the
29 tender shall be the offeror submitting the greatest number of the debtor's shares. The

1 funds tendered by the purchases shall be held in escrow until the auction of the
2 remaining shares. Shares that are submitted in a winning bid shall obtain the status
3 of treasury shares of the debtor.

4 **SEC. 63. Auction of Shares.** - The shares and bonds of NewCo shall be
5 offered to the public in a manner designed to maximize the price paid: Provided,
6 however, That the reserve price for the shares and bonds shall be equal to the amount
7 of the secured claims against the debtor plus estimated outstanding administrative
8 costs of the proceedings, less the amount raised from any initial offering to
9 shareholders.

10 **SEC. 64. Creditor Claim Certificates.** - In order to facilitate the liquidity of
11 claims and increase demand for the shares of NewCo, the conservator or his agent,
12 with the approval of the Court, may issue up to five creditor claim certificates for each
13 claim, to be denoted series A-E. Each such certificate shall indicate on its face the
14 amount of the claim and its priority status under Sub-Chapter 4 of this Chapter. At
15 the request of the creditor and for a reasonable fee, the conservator or his agent
16 shall issue certificates in smaller amounts.

17 **SEC. 65. Transferring creditor claim certificates.** - Individuals may
18 purchase creditor claim certificates of any series from creditors or other holders, the
19 consideration for which may be cash or a promise of shares in NewCo. Such
20 certificates may be transferred by delivery or through a registry administered by the
21 conservator or a transfer agent designated by the conservator. A creditor may
22 transfer differing series of Creditor Claim Certificates to various potential bidders.

23 **SEC. 66. Use of creditor claim certificates in bidding.** - The auction
24 organizer shall accept creditor claim certificates in lieu of cash or in a combination
25 therewith, taking into account the valuation calculated under Section 67 of this Act.
26 The inclusion of a creditor claim certificate in a winning bid shall be deemed a
27 complete waiver of the right represented by the certificate to participate in the
28 distribution of cash proceeds from the sale.

1 **SEC. 67. Valuation of Creditor Claim Certificates Submitted in Bidding.** -

2 The value ascribed to a creditor claim certificate of any particular class submitted in a
3 bid shall be proportional to the extent that cash generated from the offering of shares
4 is available to pay non-submitted claim certificates of that particular class.

5 **SEC. 68. Effect of Failure to Meet Reserve Price for Controlling Block of**
6 **Shares.** - A failure of the auction to garner an amount of cash and secured creditor
7 claim certificates, which when added to the amount raised by the offer to current
8 shareholders, equals the amount of the secured claims and estimated administrative
9 costs shall result in a conversion to liquidation procedures under this Act. In such
10 case the money in escrow from any shareholder offer and from the bidders shall be
11 returned; the contracts transferring the property of the debtor to NewCo shall be
12 rescinded, and any liens created to secure bonds of NewCo shall be cancelled.

13 **SEC. 69. Calling of Shareholders' Meeting.** - The conservator shall call an
14 extraordinary shareholders' meeting no later than thirty (30) days after the finalization
15 of the sale of the shares of the NewCo. The meeting shall call for, among other
16 things, the election of new members of the board of directors of the NewCo.

17 **SEC. 70. Dissolution of the Debtor.** - After distribution of the proceeds from
18 the sale of the shares of NewCo, the conservator shall assume the rights and duties
19 of a liquidator of the debtor and finalize its dissolution according to procedures
20 described in Sub-Chapter 4 of this Chapter.

21 **Sub-Chapter 2. Court-Supervised Rehabilitation**

22 **SEC. 71. Who is Eligible.** - Relief under this Sub-Chapter is available to the
23 following debtors:

- 24 (a) stock corporations, the majority of the secured creditors of which have
25 sought relief under this sub-chapter, either through a motion submitted to
26 the court, or in an affidavit attached to the petition, or
27 (b) non-stock corporations, partnerships and associations.

28 **SEC. 72. Initial Meeting of Debtor and Creditors.** Within thirty (30) days of
29 commencement of proceedings, the conservator shall hold a meeting of creditors, the

1 time and place of which shall be established in the order. The debtor shall be
2 required to send a representative to answer questions under oath concerning matters
3 of concern to the creditors.

4 **SEC. 73. *Preparation of a Rehabilitation Plan.*** - The debtor, through its
5 Board of Directors, shall prepare a plan for initial submission to the conservator and
6 the Court for distribution to the creditors and shareholders by no later than ninety (90)
7 days after commencement of proceedings. The Board of Directors of the debtor may
8 act on behalf of the shareholders to hire an individual group of financial and legal
9 experts to act as a rehabilitation planner: Provided, however, That the debtor may
10 waive its right to submitting a plan if it states so in its petition, in which case the
11 committee of general unsecured creditors may prepare a plan for initial submission to
12 the creditors and shareholders no later than one hundred and twenty (120) days after
13 commencement of proceedings. The committee of general unsecured creditors may
14 hire an individual or group of financial and legal experts to act as a rehabilitation
15 planner.

16 **SEC. 74. *Compensation of a Rehabilitation Planner.*** The compensation of
17 a rehabilitation planner shall not be considered an administrative expense.

18 **SEC. 75. *Effect of Failure to Submit Plan to Conservator within the***
19 ***required Period.*** - The Court shall convert the proceedings to liquidation under
20 Sub-Chapter 4 of this Chapter if a plan is not submitted to the conservator within the
21 required period. Provided, That the Court may allow an extension of time if approved
22 by a majority of the secured creditors and general unsecured creditors.

23 **SEC. 76. *Minimal Contents of a Plan.*** - In order to be approved by the
24 Court, the Plan shall:

- 25 (a) contain information sufficient to give the various classes of creditors and
26 shareholders a reasonable basis for determining whether supporting the
27 plan is in their financial interest when compared to the liquidation of the
28 debtor;

(b) establish classes of creditors and shareholders based on the classes of priority claims established in sub-chapter 4 of this Chapter.

(c) specify the treatment of each class described in subsection (b);

(d) provide for equal treatment of all unpaid claims within a class unless the particular creditor voluntarily agrees to less favorable treatment;

(e) disclose all payments of pre-petition debts made during the proceedings and the justifications thereof;

(f) describe the claims against the debtor still subject to dispute and the provisioning of funds to account for appropriate payments should be claim be ruled valid or its amount adjusted;

(g) require the debtor and its counter-parties to adhere to the terms of all contracts that the conservator has chosen to confirm;

(h) arrange for the payment of all outstanding administrative expenses as a condition of the plan's approval unless such condition has been waived in writing by a specific creditor;

(i) contain a valid and binding resolution of a meeting of the debtor's shareholders to increase the shares by the required amount in cases where the plan contemplates an additional issuance of shares by the debtor;

(j) include opinion letters of attorneys of the rehabilitation planner certifying that the transactions and arrangements of the plan are consistent with the law.

SEC. 77. Disclosure to creditors and shareholders. - Upon its completion, the plan shall be submitted to the conservator and the Court. The conservator shall make copies of the plan available to the creditors and shareholders for review and copying and shall within five (5) days of receipt, notify each creditor and shareholder who has made an appearance of such availability. Such notice shall inform the creditors and shareholders that they have the right to submit to the conservator a manifestation of their opposition to the plan within forty-five (45) days of receipt of notice that the plan is available for review.

1 **SEC. 78. *Submission of Plan for Approval.*** - If the majority of a creditor or
2 shareholder class has not submitted a manifestation of opposition to the plan after
3 forty-five (45) days from the time it was distributed to the creditors and shareholders,
4 the conservator shall submit the plan to the Court for approval along with a
5 manifestation of no opposition. If a majority of a class of creditors or shareholders
6 opposes the plan, the conservator shall submit a manifestation of such to the Court
7 instead of a plan for approval.

8 **SEC. 79. *Conversion to Liquidation Proceedings Upon Rejection of the***
9 ***Plan.*** – Upon receipt of a manifestation by the conservator that a majority of a
10 creditor or shareholder class has rejected the plan, the Court shall convert the
11 proceedings to those under Sub-Chapter 4 of this Chapter.

12 **SEC. 80. *Minimum Standards for Confirmation.*** - The Court shall approve a
13 plan only if the following requirements are met:

- 14 (a) the plan conforms to the requirements of Section 76 of this Act;
- 15 (b) the plan maintains the security of interest of secured creditors unless such
16 has been waived or modified voluntarily;
- 17 (c) the plan has been disclosed to creditors and shareholders according to
18 the provisions in Section 77 of this Act; and
- 19 (d) the plan is not rejected by the majority of any class of creditors or
20 shareholders established in the plan.

21 If the Court determines that the plan fails to meet the minimal requirements
22 established in this Sub-Chapter, and if determines that such non-conformity was not in
23 bad faith and is reasonably curable, it shall order the return of the plan to its authors
24 for correction and resubmission to the creditors or shareholders for review.

25 **SEC. 81. *Approval of plan notwithstanding disputes over claims.*** - The
26 Court may approve a plan notwithstanding unresolved disputes over claims so long
27 as the required support of the plan is maintained regardless of the outcome of the
28 disputes and the plan can accommodate payment of the claims regardless of the
29 outcome of the disputes.

1 **SEC. 82. *Effect of Approval.*** - Approval of the plan shall discharge the
2 financial payment obligations of the debtor unless otherwise allowed to the extent
3 called for by the plan. Contracts and other arrangements between the debtor and its
4 creditors shall be deemed to continue to apply to the extent that they do not conflict
5 with the payment provisions of the plan. Any compromises on amounts payable by
6 the debtor shall be binding on all creditors regardless of whether or not the plan is
7 successfully implemented, unless the plan is revoked on grounds of fraud. Claims
8 arising after approval of the plan that are otherwise not treated by the plan are not
9 subject to any suspension order.

10 Unless an arrangement otherwise is specifically called for in the rehabilitation
11 plan, the order shall revert full control of the debtor back to the debtor's management.

12 The order approving the plan shall comply with Rule 36 of the Rules of Court:
13 Provided, however, That the Court may maintain jurisdiction over the case in order to
14 resolve claims against the debtor that remain contested.

15 **SEC. 83. *Liability of General Partners of a Partnership for Unpaid***
16 ***Balances Under an Approved Plan.*** - The approval of the plan shall not affect the
17 rights of creditors to pursue actions against the general partners of a partnership to
18 the extent they are liable under relevant legislation for the debts thereof.

19 **SEC. 84 *Treatment of Income Derived from Forgiveness of Debt.*** -
20 Income imputed upon the debtor by any indebtedness reduced in connection with a
21 plan's approval shall be considered income earned prior to commencement of
22 proceedings under this Act.

23 **SEC. 85. *Effect of Failure to Approve.*** - A failure to approve the plan by the
24 Court shall result in a conversion of proceedings under this Sub-Chapter to those
25 under sub-chapter 4 of this Chapter.

26 **SEC. 86. *Revocation of Plan on Grounds of Fraud.*** - Within ninety (90)
27 days from the approval of the rehabilitation plan, and after notice and hearing, the
28 Court may revoke the approval thereof on the grounds of fraudulent inducement. In

1 such case, the debtor shall come under the proceedings in Sub-Chapter 4 of this
2 Chapter.

3 **SEC. 87. *Discharge of the Conservator.*** - Upon issuance of approval of the
4 rehabilitation plan, the conservator shall provide a final report and accounting to the
5 Court. The Court shall then discharge the conservator of his duties.

6 **Sub-Chapter 3. Pre-negotiated Rehabilitation**

7 **SEC. 88. *Requirements.*** - any debtor as defined under this Act may file a
8 petition seeking pre-negotiated rehabilitation as a form of relief. The petition, in
9 addition to the requirements under Sub-chapter 2 of this Chapter shall include:

10 (a) five copies of a rehabilitation plan prepared in accordance with the
11 requirements established in Sub-Chapter 2 of this Chapter;

12 (b) a judicial compromise agreement under Title XIV of the Civil Code
13 evidencing consent by creditors and shareholders sufficient to allow an
14 approval under Sub-Chapter 2 of this Act;

15 (c) a summary of disputed claims against the debtor and a report on the
16 provisioning of funds to account for appropriate payments should any such
17 claims be ruled valid or their amounts adjusted;

18 (d) the name of a qualified candidate for conservator, supported by more than
19 half of the secured creditors and general unsecured creditors.

20 **SEC. 89. *Procedures.*** - Upon receipt of a petition seeking pre-negotiated
21 rehabilitation, the Court shall issue an order in accordance with Sub-Chapter 1 of
22 chapter 3 of this Act, supplemented with information sufficient to inform interested
23 parties as to the deadlines and procedures established in this sub-chapter.

24 **SEC. 90. *Exemption From Determination of Claims.*** - The requirements of
25 Sub-Chapter 3 of Chapter 3 shall not apply to proceedings under this Sub-Chapter.

26 **SEC. 91. *Inspection and Review of Rehabilitation Plan.*** - Upon
27 commencement of the proceedings, the conservator shall make available for review
28 and copying the rehabilitation plan by any interested party.

1 **SEC. 92. *Approval by the Court.*** - Within fifty (50) days from the date of the
2 second publication notice that proceedings have commenced the Court shall approve
3 the plan unless a creditor submits an objection to it in accordance with this Sub-
4 chapter.

5 **SEC. 93. *Objection.*** - Any creditor or shareholder, within forty-five (45) days
6 from the second date of publication notice of commencement of proceedings may
7 submit to the Court an objection to a plan filed under this Sub-Chapter. Objections to
8 a rehabilitation plan shall be limited to the following:

9 (a) the plan fails to include the information or attachments required by Sub-
10 chapter 2 of this Chapter;

11 (b) the documents filed by the debtor are materially false or misleading;

12 (c) a majority of any class of creditors does not support the plan;

13 (d) the plan fails to accurately account for a claim against the debtor; or

14 (e) the creditors' support was induced by fraud.

15 Copies of any objection to the plan shall be served on the debtor, the
16 conservator, and the largest seven secured creditors and largest seven general
17 unsecured creditors who support the plan.

18 **SEC. 94. *Hearing an objection.*** - Upon receipt of an objection, the Court
19 shall issue an order setting the time and date of the hearing on the objection. The
20 date of such hearing shall be no earlier than sixty (60) and no later than seventy (70)
21 days after the second date of publication notice of commencement of proceedings. If
22 the Court finds the objection valid, it shall order, when possible, the debtor to cure the
23 petition of plan within a reasonable period. If the Court determines that the debtor
24 and/or creditors acted in bad faith, or that the bases for objection are non-curable,
25 the Court shall order the conversion of these proceedings to those under Sub-
26 Chapter 4 of this chapter. A finding by the Court that the objection lacks merit shall
27 issue an order approving the plan in accordance with sub-chapter 2 of this chapter.

28 **SEC. 95. *Effect of Approval.*** - Approval of the plan under this Chapter shall
29 have the same legal effect as approval of a plan under sub-chapter 2 of this chapter.

1 **Sub-Chapter 4. Dissolution and Liquidation**

2 **SEC. 96. *Requirements for Initiation.*** - Dissolution and liquidation
3 proceedings shall commence either:

4 (a) upon a finding that a petition to initiate voluntary proceedings seeking such
5 relief is sufficient in form and substance; or

6 (b) upon issuance of an order converting the proceedings under other forms of
7 relief to those under this sub-chapter: Provided, That such order shall
8 contain the relevant information required under Section 24 of this Act.

9 **SEC. 97. *Appointment of a Liquidator.*** - The order commencing liquidation
10 proceedings shall name a liquidator, who may be the conservator administering the
11 debtor prior to the commencement of liquidation portion of the proceedings.

12 **SEC. 98. *Consequences of Initiating Liquidation Proceedings.*** - The
13 commencement of liquidation proceedings shall either initiate or continue the
14 administration of the debtor in accordance with Chapter III of this Act subject to the
15 particular provisions under this Sub-Chapter: Provided, however, That upon an
16 initiation of liquidation proceedings, the debtor shall be declared dissolved and all
17 contracts and agreements of the debtor shall be deemed breached as of the date of
18 commencement of proceedings.

19 **SEC. 99. *Specific Rights and Duties of a Liquidator.*** - In addition to the
20 rights and duties of a conservator, the liquidator shall have the following rights and
21 duties:

22 (a) to file a notice with the Securities and Exchange Commission that the
23 dissolution of the debtor has commenced;

24 (b) in cases when there has been an order converting the proceedings from
25 other proceedings in this Chapter, to publish the order in a newspaper of
26 general circulation for two (2) consecutive weeks, the date of the first
27 publication to be no later than five (5) business days after issuance of the
28 order;

- 1 (c) to discontinue the business operations of the debtor except for those
2 operations necessary to maintain the value of the properties of the debtor
3 prior to their sale;
- 4 (d) to dismiss the debtor's management and work force to the extent that they
5 are not needed to maintain the value of the properties of the debtor prior
6 to their sale;
- 7 (e) to transfer possession of all properties held in trust or other custodial
8 arrangement by the debtor to the beneficiaries or to a successor trustee,
9 taking into account the requirement of any applicable trust arrangement;
- 10 (f) to return or surrender all properties of third parties used by the debtor under
11 lease: Provided, That the liquidator may postpone such transfer if such
12 properties are needed to maintain the value of the properties of the debtor
13 prior to their sale'
- 14 (g) to submit to the Court within forty-five (45) days from his qualification an
15 inventory of all the assets of the debtor describing with sufficient
16 particularity the nature, condition and value thereof;
- 17 (h) to submit to the Court a liquidation plan in accordance with the
18 requirements of this Act not later than sixty (60) days from the
19 commencement of the proceedings;
- 20 (i) to sell assets of the debtor prior to the approval of the liquidation plan if
21 such assets are subject to rapid depreciation in value, or such sales are
22 necessary to raise funds to preserve the assets of the debtor: Provided,
23 however, That the sale of the assets shall be made under commercially
24 reasonable conditions in a manner reasonably designed to maximize the
25 revenues gained from the sale;
- 26 (j) to keep the funds of the debtor that are not needed for immediate
27 disbursement in bank accounts insured by the *Philippine Deposit Insurance*
28 *Corporation*, or in bills and other evidences of indebtedness of the
29 Republic of the Philippines of the *Bangko Sentral ng Pilipinas*;

1 (k) to perform such other duties and function as the Court may from time to
2 time impose on him.

3 **SEC. 100. Compensation of the liquidator.** - The compensation scheme for
4 the liquidator shall be established with a view towards providing the liquidator with
5 reasonable incentives to maximize the amount of money paid out to creditors and
6 shareholders for legitimate claims.

7 **SEC. 101. Requirements of a Liquidation Plan.** - The liquidation plan shall

8 (a) describe with reasonable detail the assets of the debtor including any
9 readily ascertainable values;

10 (b) disclose the details of any sales, abandonment, or other dispositions of the
11 debtor's assets by the liquidator prior to the submission of the plan;

12 (c) describe the manner for selling the debtor's assets and how this manner is
13 superior to other methods in terms of the likelihood of obtaining the greatest
14 recovery for the creditors and shareholders;

15 (d) specifically describe the treatment of encumbered assets of the debtor
16 (abandonment, dacion en pago, sales bundled with other assets);

17 (e) specifically describe the treatment of cause of action, receivable and other
18 claims held by the debtor (action by the liquidator, or assignment);

19 (f) state the amount of undisputed indebtedness of the debtor for each
20 preference class;

21 (g) describe the amount of disputed or contingent liabilities and their likelihood
22 of maturity and impact on the undisputed creditors and shareholders.

23 **SEC. 102. Hearing and Approval of Plan.** - Upon receipt of the liquidation
24 plan, the Court shall issue an order setting a hearing therefrom, informing the
25 creditors that the Plan has been submitted and is available for examination and
26 copying, and directing all creditors of record to submit their comment or opposition
27 thereto no later than fifteen (15) days before the date of the hearing.

28 **SEC. 103. Disposition of Encumbered Property Held by the Debtor.** - The
29 liquidator may arrange to dispose of encumbered property of the debtor through any

means allowed by law in order to maximize the liquidation dividend for the creditors and shareholders: Provided, however, That the liquidator may not sell encumbered property bundled with other property if the amount offered or bid is not sufficient to cover the amount of the claims of the creditors holding liens on the property offered for sale: Provided, further, That the restrictions on the rights of secured creditors to foreclose on and sell encumbered immovable property shall not extend beyond sixty (60) days from the date of the approval of the liquidation plan and thirty (30) days from such date with regard to all other encumbered property.

SEC. 104. Rules for Payment of Claims Secured by Encumbered Property.

- The liquidator shall distribute the proceeds of the sale of encumbered property, after paying reasonable costs of sale, relevant property taxes, and the expenses necessary to extinguish any possessory liens, according to a priority established by the date of their registration in the appropriate registry. No subsequently registered lien holder shall receive payment unless all lien holders senior thereto are paid in full. Proceeds remaining after payment of claims secured by registered liens shall be applied to claims secured by statutory non-possessory liens on the property not registered with the appropriate registry: Provided, That portions of claims arising from imposition of a fine, penalty, forfeiture, or exemplary or punitive damages that are not compensatory for pecuniary loss suffered by the creditor shall be paid according to Section 106 of this Act.

Where proceeds are insufficient to pay in full a claim secured by a registered lien, the portion remaining unpaid shall be paid according to Section 106 of this Act. Where proceeds are insufficient to pay in full all claims secured by unregistered statutory liens, the proceeds from the sale shall be applied to such claims on a pro-rata basis. Portions of such claims not covered by the proceeds from the sale shall be paid according to Section 106 of this Act.

SEC. 105. Rule for Payment of Unsecured Claims. - The liquidator shall pay the undisputed unsecured claims of the debtor according to the order set forth in Section 106 of this Act. The liquidator shall not pay the claims of any particular class

1 unless and until the creditors of the more senior classes have been paid in full.

2 Where assets are available only to pay a portion of a class, the liquidator shall make
3 payment on a pro-rata basis.

4 **SEC. 106. *Priority of Unsecured Claims.*** - The liquidator shall distribute the
5 proceeds from the sale of unencumbered property and shall distribute the surpluses
6 from the sale of encumbered property according to the following order in accordance
7 with the procedures established in Section 105 of this Act:

8 (a) administrative expenses;

9 (b) unpaid labor wages, other mandate compensation and corresponding
10 withholding tax on laborers;

11 (c) claims of Government for taxes and other mandatory contributions to local
12 budgetary agencies not otherwise treated in this Sub-Chapter arising
13 through transactions entered into up to the day before commencement
14 proceedings;

15 (d) all claims not otherwise specified in this Section;

16 (e) portions of claims arising from imposition of a fine, penalty, forfeiture or
17 exemplary or punitive damages that are not compensation for pecuniary
18 loss suffered by the creditor;

19 (f) claims which have been subordinated by either consent of the creditor or by
20 a provision in this Act or other legislation.

21 Proceeds remaining after payment to the creditors listed in this Section shall
22 be paid to shareholders of the debtor according to the priorities established in relevant
23 legislation.

24 **SEC. 107. *Contingency for Disputed Claims.*** - The liquidator shall set
25 aside funds for paying all disputed claims. In the event that claims are denied and
26 appeals on such decisions are exhausted, the liquidator shall distribute the funds to
27 unpaid undisputed creditors and shareholders according to the order of priority in
28 Sections 104 and 106 of this Act.

SEC. 108. *Submission and review of final report of liquidator.* - Upon distribution of the proceeds, the liquidator shall submit a report to the Court which shall describe the methods and results of the sale of debtor's assets and the distribution of proceeds to the creditors. The liquidator shall also send copies of the report to the creditors and shareholders or notify them that the report is available for review and copying. Upon receipt of the report, the Court shall schedule a hearing, notice of which shall be sent to the creditors and shareholders by the liquidator. At the hearing, the liquidator shall answer any questions of the Court of the creditors or shareholders concerning the liquidation of the debtor.

SEC. 109. 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 Securities and Exchange Commission to remove the debtor from the registry of legal entities.

SEC. 110. *Termination of Proceedings.* - Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the Securities and Exchange Commission, it shall issue an order terminating the proceedings.

CHAPTER V.

PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR REHABILITATION
PROCEEDINGS

SEC. 113. *Initiation of Proceedings.* - The court shall set a hearing in connection with an insolvency or rehabilitation proceeding 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. 114. *Provision of Relief.* - The Court may issue orders:

- (a) suspending any actions to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines;

1 (b) requiring the surrender of property of the foreign entity to the foreign
2 representative;

3 (c) providing other necessary relief.

4 **SEC. 115. *Factors Determining Entitlement to Relief.*** - In determining
5 whether to grant relief under this Sub-Chapter, the Court shall consider:

6 (a) the protection of creditors in the Philippines and the inconvenience in
7 pursuing their claims in a foreign proceeding;

8 (b) the just treatment of all creditors through resort to a unified insolvency or
9 rehabilitation proceeding;

10 (c) whether other jurisdictions have given recognition to the foreign
11 proceeding;

12 (d) the extent that the foreign proceeding recognizes the rights of creditors and
13 other interested parties in a manner substantially in accordance with the
14 manner proscribed in this Act; and

15 (e) the extent that the foreign proceeding has recognized and shown deference
16 to proceedings under this Act and previous legislation.

17 **CHAPTER VI. MISCELLANEOUS PROVISIONS**

18 **SEC. 116. *Separability Provisions.*** - If any section or provision of this Act
19 shall be declared unconstitutional or invalid, the other section or provisions thereof
20 shall continue in full force and effect.

21 **SEC. 117. *Repealing Clause.*** - The specified section of the following Acts
22 are hereby deemed repealed:

23 (a) the Insolvency Law, Sections 51 and 52;

24 (b) Presidential Decree No. 902-A, Section 5(d); and

25 (c) The Corporation Code, Section 119.

26 **SEC. 118. *Amending Clause.*** - Article 2237 of the Civil Code is hereby
27 amended to read as follows: "Insolvency and rehabilitation of juridical entities shall be
28 governed by special laws; the provisions of this Code shall apply in a suppletory

1 manner. Insolvency of physical persons shall be governed by special laws insofar as
2 they are not inconsistent with this Code.”

3 **SEC. 119. *Effectivity.*** - This law shall take effect immediately upon its
4 approval.

5 **SEC. 120. *Application to Pending Insolvency, Suspension of Payments***
6 ***and Rehabilitation Cases.*** This act shall govern all petitions filed after it takes
7 effect, and also all further proceedings in insolvency, suspension of payments and
8 rehabilitation cases then pending, except to the extent that in the opinion of the Court
9 their application would not be feasible or would work injustice, in which event the
10 procedures set forth in prior laws and regulations shall apply.

11 Approved,