

13TH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 NOV 10 P4:53

SENATE

RECEIVED BY: 

S.B. NO. 1847

Introduced by
Senator Edgardo J. Angara

EXPLANATORY NOTE

The absence of effective and orderly insolvency procedures can aggravate economic and financial crises. Without effective procedures that are applied in a consistent manner, creditors may be unable to collect on their claims, which will adversely affect the future availability of credit. Without orderly procedures, the rights of the debtors may not be adequately protected and different creditors may not be treated equitably. On the other hand, the consistent application of orderly and effective insolvency procedures plays a critical role in fostering growth and competitiveness and may also assist in the prevention and resolution of financial crises.

Insolvency proceedings in the Philippines are governed by Act No. 1956, otherwise known as the Insolvency Law, passed in 1909. It vested the courts with jurisdiction over petitions for insolvency and suspension of payments. Subsequently, Presidential Decree No 902-A ("PD 902-A"), passed in 1976 and amended in 1981, vested the Securities and Exchange Commission ("SEC") with jurisdiction over petitions for suspension of payments and rehabilitation filed by corporations, partnerships, and associations. The Securities Regulation Code, which took effect on 8 August 2000, transferred jurisdiction over petitions for suspension of payments and rehabilitation for corporations and partnerships from the SEC to the regular courts. Thereafter, the Supreme Court has released the rules of procedure for rehabilitation proceedings.

The legislative framework of our insolvency proceedings is sorely outdated. Likewise, it is inadequate and unresponsive to the modern business trends and it is generally unable to provide quick resolution of financial dilemmas. This inadequacy and unresponsiveness of the insolvency proceedings were deeply felt during the economic crisis of 1997 and 1998 when long-drawn out proceedings following corporate failures caused immense waste of resources. In some cases, the proceedings drag on to the extent of seriously threatening the survival of the subject companies.

This bill seeks to establish a more systematic framework for insolvency proceedings and provide equitable treatment to all parties involved in a financial restructuring or rehabilitation. Moreover, it seeks to maximize the chances for the survival of the company concerned by providing an ailing enterprise four different remedies, to wit: (1) fast-track rehabilitation; (2) court-supervised rehabilitation; (3) pre-negotiated rehabilitation; and (4) dissolution-liquidation.

With the aforementioned premises, approval of this bill is earnestly sought.


EDGARDO J. ANGARA

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

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

1 **CHAPTER I -- GENERAL PROVISIONS**

2 **Section 1.** *Title* -- This Act shall be known as the "Corporate Recovery Act."

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

13 **Section 3.** *Definitions of Terms*—As used in this Act the term:

14 (a) "Administrative expense" shall refer those expenses incurred after
15 commencement of proceedings that are in the ordinary course of business or that are
16 authorized or mandated under this Act.

1 (b) "Claim" shall refer to a right to payment or a right to an equitable remedy
2 that results in payment, whether or not such right is the subject of a judgment, or is
3 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed or undisputed.

4 (c) "Commencement of proceedings" shall refer to the date on which the Court
5 issued the order commencing the proceedings.

6 (d) "Creditor" shall refer to a juridical entity or physical person holding a claim
7 against 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
11 claim, 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
16 the conservator to creditors and shareholders who have filed a notice of appearance in
17 accordance with this Act.

18 (i) "Insider" shall refer to a juridical entity's director, officer, or other person in
19 control 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 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 juridical
24 entity in question.

25 (j) "Involuntary proceedings" shall refer to proceedings initiated by creditors.

26 (k) "Proceedings" shall refer to judicial proceedings commenced by the Court's
27 acceptance of a petition filed under this Act.

28 (l) "Publication notice" shall refer to notice through publication in a newspaper
29 of general circulation for two consecutive weeks.

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

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

7 (o) "Voluntary proceedings" shall refer to proceedings initiated by the debtor.

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

11 For purposes of this Section:

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

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

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

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

22 **Section 6. Power of Court** -- Upon motion or motu proprio the Court may
23 issue any order or judgment that is necessary to carry out the provisions in this Act.
24 Parties 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 **Section 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
29 that it determines to be procedural in nature: *Provided, however,* That such rules shall
30 not restrict, enlarge, or modify any substantive rights established by this Act.

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

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

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

19 **Section 10.** *Collective Decision-Making of Creditors and Shareholders* -- Any
20 provision in this Act that refers to approval, rejection, or other collective action by the
21 creditors (or to a class or sub-group of a class thereof) shall refer to the results of a
22 process by which at least half of the creditors (or a class or a sub-group of a class
23 thereof) have manifested such a decision either through affidavits or the signed minutes
24 of a meeting. The means of counting creditors for such decisions shall be solely by
25 amount of claim unless specifically stated otherwise in this Act. Decisions of
26 shareholders shall be made by majority vote according to the relevant provisions of the
27 *Corporation Code or Civil Code provisions on partnership* that are not inconsistent with
28 this Act.

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

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

9

10 **CHAPTER II -- INITIATION OF PROCEEDINGS**

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

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

17 (a) identify the debtor, its principle activities, and its addresses;

18 (b) state the fact of and the cause of the debtor's insolvency or inability to pay
19 its obligations as they become due;

20 (c) specifically state the relief sought pursuant to Chapter IV of this Act.

21 (d) include the attachments required by this Act.

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

24 (a) a verified resolution by the appropriate decision-making body of the debtor
25 authorizing the filing of the petition and the initiation of the case;

26 (b) the audited annual financial statements of the debtor for the three-year
27 period prior to the filing of the petition;

28 (c) the interim financial statement as of the end of the month prior to the filing
29 of the petition;

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

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

11 (f) copies of certificates of title to the debtor's property;

12 (g) a schedule of payments and dispositions of assets which the debtor executed
13 within a period of one hundred and eighty (180) days prior to the filing of the petition if
14 the counter-party is an insider of the debtor and ninety (90) days prior to the filing if the
15 counter-party is not an insider of the debtor;

16 (h) a detailed schedule of the cash flow of the debtor for the ninety (90) day
17 period prior to the filing of the petition;

18 (i) a detailed projection of cash flows of the debtor for at least ninety (90) days
19 from 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 (j) 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 the
23 attachments;

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

26 **Section 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 24 of this Act. It shall also, where applicable, require that the debtor
30 provide documents not included with its petition within a reasonable time period.

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Sub-Chapter 2. Involuntary Proceedings

Section 16. *Circumstances Necessary to Initiate Involuntary Proceedings* -- A creditor shall be entitled to initiate involuntary proceedings against a debtor if:

(a) he and at least two other creditors of the debtor have undisputed or adjudicated claims, the required payments on which have remained unpaid for more than sixty (60) days; or

(b) a creditor has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they come due or will render it insolvent.

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

- (a) identify the debtor, its principal activities, and its address;
- (b) state the circumstances sufficient to support a petition to initiate involuntary proceedings;
- (c) specifically state the relief sought under Chapter IV of this Act;

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

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

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

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

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

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

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

13 (d) suspend all legal proceedings against the debtor in other courts on grounds
14 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 property,
17 sell encumbered property, or otherwise attempt to collect on or enforce a claim against
18 the debtor after the commencement of proceedings unless otherwise allowed in this Act;

19 (g) render null and void any setoff after commencement of proceedings of any
20 debt owed to the debtor by any of the debtor's creditors;

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

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

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

28 The Court may order, through its injunctive and contempt powers, the transfer of
29 documents, return of property, the annotation of titles and other relevant documents, or

1 provide for other appropriate relief to address any violations of this Section or to protect
2 the interests of creditors and shareholders.

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

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

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

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

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

23 **Section 24.** *Order Commencing Proceedings* -- The order commencing
24 proceedings (either voluntary or involuntary) shall:

- 25 (a) identify the debtor, its principle activities, and its address;
- 26 (b) state the grounds for initiating the proceedings;
- 27 (c) state the relief sought under this Act and any requirements or procedures
28 particular to the relief sought;
- 29 (d) state the legal effects of the commencement of the proceedings;
- 30 (e) appoint a conservator, or liquidator when appropriate;

1 (f) summarize the requirements and deadlines for creditors to establish their
2 claims against the debtor;

3 (g) indicate the location(s) at which documents regarding the debtor and the
4 proceedings under this Act may be reviewed and copied;

5 The conservator shall publish the order in a newspaper of general circulation for
6 two consecutive weeks, the date of the first publication to be no later than five business
7 days after issuance of the order.

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

17 **Section 26. *Unencumbered Property that may be Sold or otherwise Transferred***
18 ***during the Proceedings*** – The Court may rescind any transfers of the debtor's
19 unencumbered property or encumbrances thereof by the debtor or its agents that occur
20 after the commencement of the proceedings and are outside the ordinary course of
21 business: *Provided, however,* That the following transactions may be implemented
22 upon a decision of the Court, after notice and hearing:

23 (a) payments to victims of quasi-delicts upon a showing that the claim of the
24 quasi-delict is valid and the debtor has insurance to indemnify the debtor for the
25 payments made;

26 (b) sales of the debtor's unencumbered property if such is in the interest of
27 administering the debtor and facilitating the preparation and implementation of a
28 rehabilitation plan;

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

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

3 (e) payments made to reclaim property of the debtor held pursuant to a
4 possessory pledge or mechanic's lien.

5 **Section 27.** *Foreclosures on Encumbered Assets of the Debtor* -- The Court,
6 after notice and hearing, may allow a foreclosure on encumbered property of the debtor
7 and its sale according to applicable Rules of Court and relevant legislation if such
8 foreclosure is in the best interest of the creditors and shareholders of the debtor or if
9 such foreclosure is specifically authorized by this Act.

10 **Section 28.** *Sale or Disposal of Encumbered Property or Property of Others in*
11 *Trust or Otherwise held by the Debtor* -- No provision in this Act shall be read as to
12 create a defense against estafa or other criminal charges or civil claims against persons
13 responsible for the sale or disposal of encumbered property or property of others held
14 by the debtor. Provided, however, that the conservator may sell or dispose of such
15 property if:

16 (a) such sale or disposal is necessary for the continued operation of the debtor's
17 business,

18 (b) the conservator has made arrangements to provide a substitute lien or
19 ownership right that provides an equal level of security for the counter-party's claim or
20 right; and

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

23 **Section 29.** *Treatment of Rapidly Depreciating Encumbered Property owned*
24 *by the Debtor* -- Upon the application of a creditor whose claim is secured by movable
25 property subject to potentially rapid depreciation, the Court shall, after notice and
26 hearing, order the conservator to either:

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

28 (b) convey to the secured creditor a lien on substitute property of the debtor if
29 such is acceptable to the creditor and is not opposed by any senior lien holders of such
30 property, or, if such is not available,

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

3 **Section 30.** *Rescission of Pre-Commencement Transactions* -- Transactions
4 that have occurred prior to commencement of proceedings may be rescinded by the
5 Court on grounds that they were executed with an intent to defraud creditors if it finds
6 evidence sufficient to show such a design by the debtor and the third party. A
7 disputable presumption of such design shall arise if the transaction:

8 (a) provides unreasonably inadequate consideration to the debtor and is
9 executed one hundred and eighty (180) days prior to the commencement of
10 proceedings if the third party is an insider of the debtor, and ninety (90) days prior to
11 the commencement of proceedings if the third party is not an insider of the debtor;

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

15 (c) involves an accelerated payment of a claim to a creditor one hundred and
16 eighty (180) days prior to the commencement of proceedings if the creditor is an insider
17 of the debtor and ninety (90) days prior to the commencement of proceeding if the
18 creditor is not an insider of the debtor;

19 (d) provides security or additional security for a pre-existing debt executed one
20 hundred and eighty (180) days prior to the commencement of proceedings if the
21 creditor is an insider of the debtor and ninety (90) days prior to the commencement of
22 proceedings if the creditor is not an insider of the debtor.

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

27 **Section 31.** *Post-Commencement Interest* -- Interest on claims owed by the
28 debtor as of commencement of proceedings shall accrue at the pre-default rates
29 established in the debtor's contracts: *Provided, however,* That secured creditors may
30 elect instead to freeze their claims as of the date of the commencement of proceedings

1 and be paid a use charge based on the outstanding balance or the value of the
2 encumbered property (whichever is less) calculated at a rate equivalent to that paid on
3 91-day government securities sold on or around the date of commencement of
4 proceedings. A failure by secured creditors to notify the conservator of such election
5 within thirty (days) shall be deemed a waiver of this right.

6 **Section 32. *Post-Commencement Credit*** -- With the concurrence of the
7 committee of general unsecured creditors of the debtor and the approval of the Court,
8 the conservator may:

9 (a) enter into credit arrangements on behalf of the debtor, the payments under
10 which shall be considered an administrative expense; or

11 (b) enter into credit arrangements on behalf of the debtor, secured by
12 mortgages of its unencumbered property.

13 **Section 33. *Treatment of Employees*** -- The conservator may dismiss the
14 debtor's employees from employment. In such cases, there shall be a disputable
15 presumption that the grounds of such retrenchment shall be to prevent losses. Claims
16 of separation pay for months worked prior to commencement of proceedings shall be
17 considered a pre-commencement claim and shall be added to the registry of claims
18 established in Sub-chapter 2 of this Chapter. Claims for salary and separation pay for
19 work performed after commencement of proceedings shall be an administrative
20 expense.

21 **Section 34. *Treatment of Lessors and other Counter-Parties in Contract*** --
22 Unless specifically cancelled by a court decree prior to issuance of the order
23 commencing proceedings, all contracts of the debtor with creditors and other third
24 parties shall be deemed to continue in force, regardless of pre-commencement defaults
25 by the debtor provided that the debtor makes payments for such services and goods
26 that are provided after commencement of proceedings.

27 Within sixty (60) days following commencement of the proceedings, the
28 conservator shall notify each contractual counter-party of whether the debtor is
29 confirming or breaching the particular contract. Contractual obligations of the debtor
30 arising during this period, and afterwards for confirmed contracts shall be an

1 administrative expense. Contracts not confirmed by the required deadline shall be
2 considered breached. Obligations of the debtor for damages and other penalties arising
3 as the result of the conservator's election to breach shall be considered a pre-
4 commencement claim against the debtor and shall be added to the registry of claims
5 established in Sub-chapter 2 of this Chapter.

6 **Section 35.** *Opportunity for Counter-Party in Contract to Cure after receiving*
7 *Notice of Confirmation by the Conservator* -- Any counter-party in a contract with the
8 debtor shall have a reasonable period of time to cure any breaches of its obligations to
9 the debtor that occurred subsequent to commencement of the proceedings upon
10 receiving notice of the conservator's confirmation of the contract.

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

12 **Section 36.** *Determination of Tax Liabilities* -- The debtor shall, as soon as
13 reasonably possible, file a tax return for determination of tax liabilities as of
14 commencement of proceedings.

15 **Section 37.** *Establishment of a Preliminary Registry of Claims* -- Within twenty
16 days of appointment, the conservator shall establish a preliminary registry of claims.
17 Such registry shall state for each claim:

18 (a) the name and reasonable contact details of the creditors;

19 (b) the amount of the claim as of the date of commencement of proceedings, if
20 the claim is not unliquidated;

21 (c) the extent to which it is secured by a lien on the debtor's property as of the
22 date of the commencement of proceedings;

23 (d) its preference classification among those established by Sub-chapter 4 of
24 Chapter 4 of this Act;

25 (e) whether it is undisputed, disputed, contingent or unliquidated;

26 (f) the basis of the claim and a reference to the underlying documents
27 supporting the claim or the dispute thereof.

28 The preliminary registry of claims shall subtotal the disputed, undisputed, and
29 contingent claims for each preference class, including an estimate of unpaid
30 administrative expenses that will have accrued by the close of proceedings. Records of

1 the claim kept in the normal course of business by the debtor shall be *prima facie*
2 evidence of an undisputed claim and will be the basis for its inclusion in the preliminary
3 registry of claims. Where appropriate, the conservator shall divide a claim or claims into
4 secured and unsecured classes depending on the estimated value of the encumbered
5 property.

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

9 **Section 38.** *Procedure for Supplementing the Preliminary Registry of Claims --*
10 Any person may file an application to the conservator to recognize a claim against the
11 debtor within twenty days after the second date of publication notice that the
12 preliminary registry of claims has become available.

13 **Section 39.** *Procedure for Determining Disputed and Undisputed Claims --*
14 Within thirty days from the expiration date for supplementing the preliminary registry of
15 claims, creditors, shareholders and other interested parties may submit a challenge of a
16 claim or claims to the Court, serving a certified copy on the conservator and the
17 challenged creditor. Such challenge shall set forth with reasonable specificity the basis
18 therefor. Upon the expiration of the thirty-day challenge period, the conservator shall
19 submit to the Court the registry of claims containing the undisputed claims that have not
20 been subject to challenge. Such claims shall become final upon the filing of the register
21 and may be subsequently set aside only on grounds of fraud, accident, mistake, or
22 excusable neglect.

23 **Section 40.** *Procedure for Adjudicating Disputed, Challenged and Unliquidated*
24 *Claims --*Decisions of the conservator regarding a claim may be appealed to the Court.
25 In such disputes, the parties shall be the conservator and the disputing creditor, or the
26 debtor (in cases where a claim is alleged to be wrongfully allowed): *Provided, however,*
27 That any creditor or other party who might be prejudiced by the allowance or
28 disallowance of the claim may intervene in the proceeding.

1 **Section 41.** *Procedure for Appealing Decisions of the Conservator regarding*
2 *Disputed, Challenged and Unliquidated Claims* -- The procedures for appealing the
3 decisions of the conservator shall be governed by applicable Rules of Court.

4 **Section 42.** *Estoppel of Secured Creditors Regarding Overvaluation of their*
5 *Encumbered Property* -- A secured creditor claiming a full or partial security shall be
6 estopped from claiming as an unsecured creditor the difference between the claimed
7 and realized value of the encumbered property if the amount realized from a sale of the
8 encumbered property fails to cover the claimed or attributed value thereof. Such
9 amount shall be a subordinated claim under Section 106 of this Act.

10 **Section 43.** *Estimation of Claims for Purposes of Voting or Serving on a*
11 *Creditors' Committee* -- Upon request of a creditor or shareholder, the Court shall, after
12 notice and hearing, estimate a disputed, challenged, or unliquidated claim for
13 determination of the creditor's rights in participating in collective decision-making of
14 creditors. In such disputes, the parties shall be the conservator and the disputing
15 creditor: *Provided, however,* That any creditor who might be prejudiced by the
16 estimation of the claim may, participate in the proceedings.

17 **Sub-Chapter 3. The Conservator and the Unsecured Creditors' Committee**

18 **Section 44.** *Who may serve as a Conservator* -- Any individual with the
19 following qualifications may serve as a conservator:

20 (a) expertise and acumen to manage and operate a business similar in size and
21 complexity as that of the debtor under the circumstances called for depending on the
22 particular relief requested;

23 (b) knowledge in management, finance and rehabilitation of distressed
24 companies;

25 (c) general familiarity with the provisions of this Act and the rights and duties of
26 a conservator thereunder;

27 (d) absence of any criminal record or evidence of questionable moral character;

28 (e) willingness and ability to file a bond in such amount as may be determined
29 by the Court.

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

4 **Section 45. *Conflicts of Interest*** -- No individual may serve as a conservator,
5 perform conservatorship functions as an employee of a conservator, or serve on a
6 conservatorship committee if he has a conflict of interest: *Provided, however,* That
7 conflicts of interest that might compromise the conservator's duty to the debtor may be
8 waived by vote of the debtor's board of directors, and conflicts of interest that might
9 compromise the conservator's duties toward the creditors or shareholders may be
10 waived by a simple majority decision of the disinterested parties.

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

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

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

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

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

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

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

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

28 **Section 46. *Appointment of a Conservator*** -- The conservator shall be
29 appointed by the Court: *Provided, however,* That the Court shall appoint as conservator
30 any qualified individual whose nomination is supported by more than fifty (50) percent

1 of the secured creditors and general unsecured creditors, if evidence of such is
2 submitted with the petition or by a manifestation to the Court prior to the conservator's
3 appointment.

4 **Section 47. *Rights and Duties of a Conservator*** -- Subject to the control of the
5 Court, the conservator shall administer and preserve the property of the debtor during
6 the pendency of the proceedings, for purposes of protecting the interests of the
7 creditors and shareholders thereof, taking into account their rights as determined by this
8 Act, the rules of procedure of the Court, and other applicable laws: *Provided, however,*
9 That, absent evidence of circumstances justifying more direct management, the rights
10 and responsibilities of administering and preserving the assets of the debtor shall be
11 delegated to the debtor's management.

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

14 The conservator shall not be subject to any action, claim or demand in
15 connection with any act done or omitted to be done by him in good faith in the exercise
16 of his functions and in connection with the exercise of his powers conferred by this Act
17 or other actions duly approved by the Court.

18 **Section 48. *Duty to Report on Steps taken to Protect the Value of***
19 *Encumbered Property and Property of Others* – On a monthly basis, or according to a
20 schedule approved by the Court, the conservator shall report to the Court and interested
21 parties the steps taken to maintain the value of encumbered property and property of
22 others held by the debtor during the course of the proceedings.

23 **Section 49. *Duty to act as Service Agent for Parties making an Appearance*** --
24 The conservator shall serve as the agent for receiving service of all pleadings and other
25 papers filed in connection with the proceedings under this Act and shall keep a complete
26 and accurate record of all pleadings filed during the proceedings as well as a summary
27 log describing each pleading. The conservator shall immediately deliver, by messenger,
28 mail, fax or electronic means, to all parties making an appearance, copies of documents
29 (or notice of their availability for inspection and copying) filed with the Court and shall
30 file with the Court an affidavit of service to this effect. The conservator may charge a

1 reasonable fee for this service, the rates for which are to be approved by the Court:
2 *Provided, however,* That such notice shall be free of charge if the creditor consents to
3 notice by electronic mail and submits a valid electronic mail address as part of its notice
4 of appearance.

5 **Section 50.** *Suspension of Cases in other Courts* -- The conservator shall have
6 the right and duty in pending cases against the debtor in other courts to appear on
7 behalf of the debtor and move to have such cases suspended pending the resolution of
8 the proceedings in the Court.

9 **Section 51.** *Recording of Pending Proceedings at Property Registration Offices*
10 -- The conservator shall take all reasonable steps to preserve the rights of the debtor
11 through submissions to the applicable land and property registries in accordance with
12 applicable legislation: *Provided,* That no such actions shall diminish or otherwise
13 compromise the rights of claimants with valid, prior-registered liens against such
14 property.

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

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

23 **Section 54.** *Compensation and Terms of Service* -- The conservator and his
24 direct employees or independent contractors shall be entitled to compensation for
25 reasonable fees and expenses from the debtor according to terms approved by the
26 Court after notice and hearing. Prior to such hearing, the conservator and his direct
27 employees shall be entitled to reasonable compensation on the grounds of quantum
28 meruit. Such costs shall be an administrative expense.

29 **Section 55.** *General Unsecured Creditors' Committee*—Unless otherwise
30 provided for in this Act, the Court shall appoint a committee of seven general unsecured

1 creditors that have the largest such claims against the debtor and that are willing to
2 serve in such capacity.

3 **Section 56.** *Rights of the General Unsecured Creditors' Committee*—The
4 unsecured creditors' committee shall have the right to:

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

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

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

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

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

15

16 **CHAPTER IV -- REMEDIES**

17 **Sub-Chapter 1. Fast-Track Rehabilitation**

18 **Section 57.** *Default Relief* – The debtor and creditors shall be limited to relief
19 under this sub-chapter unless:

20 (a) the debtor has initiated voluntary proceedings under this Act seeking relief
21 under Sub-chapter 3 of this Chapter;

22 (b) the debtor is a non-stock corporation or a partnership; or

23 (c) more than half of the secured creditors request conversion to relief under
24 Sub-chapter 2 of this Chapter within thirty days of notice of commencement of
25 proceedings.

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

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

5 **Section 59.** *Establishment and Capitalization of a Subsidiary of the Debtor --*
6 The conservator shall establish a subsidiary corporation whose shares shall be issued to
7 the debtor in the form of a single class of common stock: *Provided, however,* That five
8 of the issued shares may be issued to nominee holders/incorporators, one of whom shall
9 be the conservator. The number of shares issued shall equal the amount of
10 indebtedness of the debtor represented by its disputed and undisputed claims reflected
11 in the registry of claims. The par value of each share shall be one peso: *Provided,*
12 *however,* That the debtor may issue no par value shares if the amount of the
13 indebtedness exceeds the estimated value of the debtor's assets.

14 The consideration for the shares shall be the property of the debtor, including its
15 non-rejected leasehold and contractual rights and obligations. Contractual provisions
16 prohibiting such transfers or assignments shall be deemed null and void: *Provided,* That
17 encumbered property shall be transferred to the subsidiary corporation subject to
18 existing liens.

19 **Section 60.** *Non-Requirement of Approval of Shareholders* — Notwithstanding
20 the provisions in the Corporate Code, the debtor, through, the conservator, may transfer
21 all or substantially all of the assets of the debtor to the subsidiary corporation without
22 the approval of the debtor's shareholders.

23 **Section 61.** *Issuance of Bonds* – The conservator may also arrange for the
24 issuance of bonds by the subsidiary corporation to the debtor: *Provided,* That the total
25 nominal value of such bonds shall not exceed twenty percent of the debt of the debtor
26 and the monthly payments on which shall not exceed twenty percent of the monthly
27 payment obligations of the debtor at the time of commencement of the proceedings:
28 Such bonds may be secured by liens on property of the subsidiary corporation.
29 Notwithstanding any contractual prohibitions or regulations to the contrary, the

1 conservator may establish and register liens on encumbered property of the subsidiary
2 corporation: *Provided*, That such liens are junior to pre-existing liens.

3 **Section 62.** *Offer to Current Shareholders* -- In cases where the debtor had
4 initiated voluntary proceedings, the shareholders of the debtor shall have the option of
5 purchasing up to twenty (20) percent of the shares of the subsidiary corporation, prior
6 to their public sale. The purchase price of the shares shall be equal to twenty (20)
7 percent of the total disputed and undisputed claims. The expiration date for receiving
8 offers shall be no later than sixty days from approval of the plan. Each purchase offer
9 shall be combined with the offer to tender at least twenty percent of the shares of the
10 debtor. In cases where more than one offer is tendered, the winner of the tender shall
11 be the offer or submitting the greatest number of the debtor's shares. The funds
12 tendered by the purchaser shall be held in escrow until the auction of the remaining
13 shares. Shares that are submitted in a winning bid shall obtain the status of treasury
14 shares of the debtor.

15 **Section 63.** *Auction of Shares* – The shares and bonds of the subsidiary
16 corporation shall be offered to the public in a manner designed to maximize the price
17 paid: *Provided, however*, That the reserve price for the shares and bonds shall be equal
18 to the amount of the secured claims against the debtor plus estimated outstanding
19 administrative costs of the proceeding, less the amount raised from any initial offering to
20 shareholders.

21 **Section 64.** *Creditor Claim Certificates* -- In order to facilitate the liquidity of
22 claims and increase demand for the shares of the subsidiary corporation, the
23 conservator or his agent, with the approval of the Court, may issue up to five creditor
24 claim certificates for each claim, to be denoted series A-E. Each such certificate shall
25 indicate on its face the amount of the claim and its priority status under Sub-chapter 4
26 of this Chapter. At the request of the creditor, and for a reasonable fee, the conservator
27 or his agent shall issue certificates in smaller amounts.

28 **Section 65.** *Transferring Creditor Claim Certificates* -- Individuals may
29 purchase creditor claim certificates of any series from creditors or other holders, the
30 consideration for which may be cash or a promise of shares in the subsidiary

1 corporation. Such certificates may be transferred by delivery or through a registry
2 administered by the conservator or a transfer agent designated by the conservator. A
3 creditor may transfer differing series of Creditor Claim Certificates to various potential
4 bidders.

5 **Section 66.** *Use of Creditor Claim Certificates in Bidding* -- The auction
6 organizer shall accept creditor claim certificates in lieu of cash or in a combination
7 therewith, taking into account the valuation calculated under Section 67 of this Act. The
8 inclusion of a creditor claim certificate in a winning bid shall be deemed a complete
9 waiver of the right represented by the certificate to participate in the distribution of cash
10 proceeds from the sale.

11 **Section 67.** *Valuation of Creditor Claim Certificates submitted in Bidding* -- The
12 value ascribed to a creditor claim certificate of any particular class submitted in a bid
13 shall be proportional to the extent that cash generated from the offering of shares is
14 available to pay non-submitted claim certificates of that particular class.

15 **Section 68.** *Effect of Failure to meet Reserve Price for controlling Block of*
16 *Shares* -- A failure of the auction to garner an amount of cash and secured creditor
17 claim certificates, which, when added to the amount raised by the offer to current
18 shareholders, equals the amount of the secured claims and estimated administrative
19 costs shall result in a conversion to liquidation procedures under this Act. In such case
20 the money in escrow from any shareholder offer and from the bidders shall be returned,
21 the contracts transferring the property of the debtor to the subsidiary corporation shall
22 be rescinded, and any liens created to secure bonds of the subsidiary corporation shall
23 be cancelled.

24 **Section 69.** *Calling of Shareholders' Meeting* -- The conservator shall call an
25 extraordinary shareholders' meeting no later than thirty days after the finalization of the
26 sale of the shares of the subsidiary corporation. The meeting shall call for, among other
27 things, the election of new members of the board of directors of the subsidiary
28 corporation.

29 **Section 70.** *Dissolution of the Debtor* -- After distribution of the proceeds from
30 the sale of the shares of the subsidiary corporation, the conservator shall assume the

1 rights and duties of a liquidator of the debtor and finalize its dissolution according to
2 procedures described in Sub-chapter 4 of this Chapter.

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

4 **Section 71.** *Who is Eligible* – Relief under this Sub-chapter is available to the
5 following debtors:

6 (a) stock corporations, the majority of the secured creditors of which have
7 sought relief under this Sub-chapter, either through a motion submitted to the Court, or
8 in a affidavit attached to the petition; or

9 (b) non-stock corporations, partnerships and associations.

10 **Section 72.** *Initial Meeting of Debtor and Creditors* -- Within thirty days of
11 commencement of proceedings, the conservator shall hold a meeting of creditors, the
12 time and place of which shall be established in the order. The debtor shall be required
13 to send a representative to answer questions under oath concerning matters of concern
14 to the creditors.

15 **Section 73.** *Preparation of a Rehabilitation Plan* -- The debtor, through its
16 board of directors, shall prepare a plan for initial submission to the conservator and the
17 Court for distribution to the creditors and shareholders by no later than ninety (90) days
18 after commencement of proceedings. The board of directors of the debtor may act on
19 behalf of the shareholders to hire an individual or group of financial and legal experts to
20 act as a rehabilitation planner: *Provided, however,* That the debtor may waive its right
21 to submitting a plan if it states so in its petition, in which case the committee of general
22 unsecured creditors may prepare a plan for initial submission to the creditors and
23 shareholders no later than one-hundred and twenty (120) days after commencement of
24 proceedings. The committee of general unsecured creditors may hire an individual or
25 group of financial and legal experts to act as a rehabilitation planner.

26 **Section 74.** *Compensation of a Rehabilitation Planner* -- The compensation of
27 a rehabilitation planner shall not be considered an administrative expense.

28 **Section 75.** *Effect of Failure to Submit Plan to Conservator within the Required*
29 *Period* – The Court shall convert the proceedings to liquidation under Sub-chapter 4 of
30 this Chapter if a plan is not submitted to the conservator within the required period.

1 *Provided*, That the Court may allow an extension of time if approved by a majority of
2 the secured creditors and general unsecured creditors.

3 **Section 76.** *Minimal Contents of a Plan* -- In order to be approved by the
4 Court, the plan shall:

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

8 (b) establish classes of creditors and shareholders based on, at a minimum, the
9 classes of priority claims established in sub-chapter 4 of this Chapter;

10 (c) specify the treatment of each class described in sub-section (b);

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

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

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

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

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

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

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

28 **Section 77.** *Disclosure to Creditors and Shareholders* -- Upon its completion,
29 the plan shall be submitted to the conservator and Court. The conservator shall make
30 copies of the plan available to the creditors and shareholders for review and copying and

1 shall within five days from receipt, notify each creditor and shareholder who has made
2 an appearance of such availability. Such notice shall inform the creditors and
3 shareholders that they have the right to submit to the conservator a manifestation of
4 their opposition to the plan within forty-five days from receipt of notice that the plan is
5 available for review.

6 **Section 78.** *Submission of Plan for Approval* -- If the majority of a creditor or
7 shareholder class has not submitted a manifestation of opposition to the plan after forty-
8 five days from the time it was distributed to the creditors and shareholders, the
9 conservator shall submit the plan to the Court for approval along with a manifestation of
10 no opposition. If a majority of a class of creditors or shareholders opposes the plan, the
11 conservator shall submit a manifestation of such to the Court instead of a plan for
12 approval.

13 **Section 79.** *Conversion to Liquidation Proceedings upon Rejection of the Plan*
14 -- Upon receipt of a manifestation by the conservator that a majority of a creditor or
15 shareholder class has rejected the plan, the Court shall convert the proceedings to those
16 under Sub-chapter 4 of this Chapter.

17 **Section 80.** *Minimal Standards for Confirmation* -- The Court shall approve a
18 plan only if the following requirements are met:

19 (a) the plan conforms to the requirements of Section 76 of this Act;

20 (b) the plan maintains the security interest of secured creditors unless such has
21 been waived or modified voluntarily;

22 (c) the plan has been disclosed to creditors and shareholders according to the
23 provisions in Section 77 of this Act; and

24 (d) the plan is not rejected by the majority of any class of creditors or
25 shareholders established in the plan.

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

1 **Section 81.** *Approval of Plan notwithstanding Disputes over Claims*—The Court
2 may approve a plan notwithstanding unresolved disputes over claims so long as the
3 required support of the plan is maintained regardless of the outcome of the disputes and
4 the plan can accommodate payment of the claims regardless of the outcome of the
5 disputes.

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

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

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

20 **Section 83.** *Liability of General Partners of a Partnership for Unpaid Balances*
21 *under an Approved Plan* —The approval of the plan shall not affect the rights of creditors
22 to pursue actions against the general partners of a partnership to the extent they are
23 liable under relevant legislation for the debts thereof.

24 **Section 84.** *Treatment of Income derived from Forgiveness of Debt* -- Income
25 imputed upon the debtor by any indebtedness reduced in connection with a plan's
26 approval shall be considered income earned prior to commencement of proceedings
27 under this Act.

28 **Section 85.** *Effect of Failure to Approve* -- A failure to approve the plan by the
29 Court shall result in a conversion of proceedings under this Sub-chapter to those under
30 Sub-chapter 4 of this Chapter.

1 **Section 86.** *Revocation of Plan on Grounds of Fraud* -- Within ninety (90)
2 days from the approval of the rehabilitation plan, and after notice and hearing, the Court
3 may revoke the approval thereof on the grounds of fraudulent inducement. In such
4 case, the debtor shall come under the proceedings described in Sub-chapter 4 of this
5 Chapter.

6 **Section 87.** *Discharge of the Conservator* -- Upon issuance of approval of the
7 rehabilitation plan, the conservator shall provide a final report and accounting to the
8 Court. The Court shall then discharge the conservator of his duties.

9 **Sub-Chapter 3. Pre-Negotiated Rehabilitation**

10 **Section 88.** *Requirements* -- Any debtor as defined under this Act may file a
11 petition seeking pre-negotiated rehabilitation as a form of relief. The petition, in
12 addition to the requirements under Sub-chapter 2 of this Chapter shall include:

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

15 (b) a *judicial compromise agreement* under Title XIV of the Civil Code evidencing
16 consent by creditors and shareholders sufficient to allow an approval under Sub-chapter
17 2 of this Act;

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

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

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

27 **Section 90.** *Exemption from Determination of Claims* -- The requirements of
28 Sub-chapter 2 of Chapter 3 shall not apply to proceedings under this Sub-chapter.

1 **Section 91.** *Inspection and Review of Rehabilitation Plan* -- Upon
2 commencement of the proceedings, the conservator shall make available for review and
3 copying the rehabilitation plan by any interested party.

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

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

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

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

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

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

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

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

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

1 **Section 95.** *Effect of Approval* -- Approval of the plan under this Chapter shall
2 have the same legal effect as approval of a plan under Sub-chapter 2 of this Chapter.

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

4 **Section 96.** *Requirements for Initiation* -- Dissolution and liquidation
5 proceedings shall commence either:

6 (a) upon a finding that a petition to initiate voluntary proceedings seeking such
7 relief is sufficient in form and substance, or

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

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

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

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

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

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

6 (e) to transfer possession of all properties held in trust or other custodial
7 arrangement by the debtor to the beneficiaries or to a successor trustee, taking into
8 account the requirements of any applicable trust arrangement;

9 (f) to return or surrender all properties of third parties used by the debtor under
10 lease: Provided, That the liquidator may postpone such transfer if such properties are
11 needed to maintain the value of the properties of the debtor prior to their sale;

12 (g) to submit to the Court within forty-five (45) days from his qualification an
13 inventory of all the assets of the debtor describing with sufficient particularity the
14 nature, condition and value thereof;

15 (h) to submit to the Court a liquidation plan in accordance with the requirements
16 of this Act not later than sixty (60) days from the commencement of proceedings;

17 (i) to sell assets of the debtor prior to the approval of the liquidation plan if such
18 assets are subject to rapid depreciation in value, or such sales are necessary to raise
19 funds to preserve the assets of the debtor: Provided, however, That the sale of the
20 assets shall be made under commercially reasonable conditions in a manner reasonably
21 designed to maximize the revenues gained from the sale;

22 (j) to keep the funds of the debtor that are not needed for immediate
23 disbursement in bank accounts insured by the Philippine Deposit Insurance Corporation,
24 or in bills and other evidences of indebtedness of the Republic of the Philippines or the
25 Bangko Sentral ng Pilipinas;

26 (k) to perform such other duties and functions as the Court may from time to
27 time impose on him.

28 **Section 100. Compensation of the Liquidator** -- The compensation scheme for
29 the liquidator shall be established with a view towards providing the liquidator with

1 reasonable incentives to maximize the amount of money paid out to creditors and
2 shareholders for legitimate claims.

3 **Section 101. Requirements of a Liquidation Plan** -- The liquidation plan shall

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

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

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

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

13 (e) specifically describe the treatment of causes of action, receivable and other
14 claims held by the debtor (action by the liquidator, or assignment);

15 (f) state the amount of undisputed indebtedness of the debtor for each
16 preference class;

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

19 **Section 102. Hearing and Approval of Plan** -- Upon receipt of the liquidation
20 plan, the Court shall issue an order setting a hearing thereon, informing the creditors
21 that the Plan has been submitted and is available for examination and copying, and
22 directing all creditors of record to submit their comment or opposition thereto not later
23 than fifteen (15) days before the date of the hearing.

24 **Section 103. Disposition of Encumbered Property held by the Debtor** -- The
25 liquidator may arrange to dispose of encumbered property of the debtor through any
26 means allowed by law in order to maximize the liquidation dividend for the creditors and
27 shareholders: *Provided, however,* That the liquidator may not sell encumbered property
28 bundled with other property if the amount offered or bid is not sufficient to cover the
29 amount of the claims of the creditors holding liens on the property offered for sale:
30 *Provided further,* That the restrictions on the rights of secured creditors to foreclose on

1 and sell encumbered immovable property shall not extend beyond sixty (60) days from
2 the date of the approval of the liquidation plan and thirty (30) days from such date with
3 regard to all other encumbered property.

4 **Section 104. Rules for Payment of Claims Secured by Encumbered Property –**

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

15 Where proceeds are insufficient to pay in full a claim secured by a registered
16 lien, the portion remaining unpaid shall be paid according to Section 106 of this Act.

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

21 **Section 105. Rules for Payment of Unsecured Claims --** The liquidator shall pay
22 the undisputed unsecured claims of the debtor according to the order set forth in
23 Section 106 of this Act. The liquidator shall not pay the claims of any particular class
24 unless and until the creditors of the more senior classes have been paid in full. Where
25 assets are available only to pay a portion of a class, the liquidator shall make payment
26 on a pro-rata basis.

27 **Section 106. Priority of Unsecured Claims –** The liquidator shall distribute the
28 proceeds from the sale of unencumbered property and shall distribute surpluses from
29 the sale of encumbered property according to the following order in accordance with the
30 procedures established in Section 105 of this Act:

- 1 (a) administrative expenses;
- 2 (b) unpaid labor wages, other mandated compensation, and corresponding
3 withholding tax on laborers;
- 4 (c) claims of the Government for taxes and other mandatory contributions to
5 federal and local budgetary agencies not otherwise treated in this Sub-chapter arising
6 through the day before commencement of proceedings;
- 7 (d) all claims not otherwise specified in this Section;
- 8 (e) portions of claims arising from imposition of a fine, penalty, forfeiture, or
9 exemplary or punitive damages that are not compensation for pecuniary loss suffered by
10 the creditor;
- 11 (f) claims which have been subordinated by either consent of the creditor or by
12 a provision in this Act or other legislation.

13 Proceeds remaining after payment to the creditors listed in this Section shall be
14 paid to shareholders of the debtor according to the priorities established in relevant
15 legislation.

16 **Section 107. Contingency for Disputed Claims** -- The liquidator shall set aside
17 funds for paying all disputed claims. In the event that claims are denied and appeals on
18 such decisions are exhausted, the liquidator shall distribute the funds to unpaid
19 undisputed creditors and shareholders according to the order of priority in Sections 104
20 and 106 of this Act.

21 **Section 108. Submission and Review of Final Report of Liquidator** -- Upon
22 distribution of the proceeds, the liquidator shall submit a report to the Court which shall
23 describe the methods and results of the sale of debtor's assets and the distribution of
24 proceeds to the creditors. The liquidator shall also send copies of the report to the
25 creditors and shareholders or notify them that the report is available for review and
26 copying. Upon receipt of the report, the Court shall schedule a hearing, notice of which
27 shall be sent to the creditors and shareholders by the liquidator. At the hearing, the
28 liquidator shall answer any questions of the Court or the creditors or shareholders
29 concerning the liquidation of the debtor.

1 **Section 109.** *Order Removing the Debtor from the List of Registered Entities at*
2 *the Securities and Exchange Commission* – Upon determining that the liquidation has
3 been completed according to this Act and applicable law, the Court shall issue an order
4 approving the report and ordering the Securities and Exchange Commission to remove
5 the debtor from the registry of legal entities.

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

9
10 **CHAPTER V -- PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR**
11 **REHABILITATION PROCEEDINGS**

12
13 **Sub-Chapter 5. Banks and other Financial Institutions under**
14 **Receivership pursuant to a State-Funded or State-Mandated**
15 **Insurance System**

16
17 **Section 111.** *Provision of Assistance*--The Court shall issue orders, adjudicate
18 claims, and provide for other relief necessary to assist in the liquidation of a financial
19 institution under receivership established by a state-funded or state-mandated insurance
20 system.

21 **Section 112.** *Application of Relevant Legislation* -- The liquidation of financial
22 institutions shall be determined by the relevant legislation. The provisions in this Act
23 shall apply in a suppletory manner.

24 **Sub-Chapter 6. Foreign Registered Corporations with Assets in**
25 **the Philippines**

26 **Section 113.** *Initiation of Proceedings* -- The Court shall set a hearing in
27 connection with an insolvency or rehabilitation proceeding in a foreign jurisdiction, upon
28 the submission of a petition by the representative of the foreign entity that is the subject
29 of the foreign proceeding.

30 **Section 114.** *Provision of Relief*-- The Court may issue orders:

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

3 (b) requiring the surrender of property of the foreign entity to the foreign
4 representative;

5 (c) providing other necessary relief.

6 **Section 115. Factors determining Entitlement to Relief**--In determining whether
7 to grant relief under this Sub-chapter, the Court shall consider:

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

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

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

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

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

18

19 **CHAPTER VI -- MISCELLANEOUS PROVISIONS**

20 **Section 116. Separability Provisions** – If any provision of this Act shall be held
21 invalid, the remainder of this Act not otherwise affected shall remain in full force and
22 effect.

23 **Section 117. Repealing Clause** – The specified sections of the following Acts are
24 hereby deemed repealed:

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

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

27 (c) the Corporation Code, Section 119.

28 **Section 118. Amending Clause** – Article 2237 of the Civil Code is hereby
29 amended to read as follows: “Insolvency and rehabilitation of juridical entities shall be
30 governed by special laws; the provisions of this Code shall apply in a suppletory manner.

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

3 **Section 119. *Effective Date*** – This Act will take effect immediately upon
4 approval.

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

11 *Approved,*