

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

SENATE

COMMITTEE REPORT NO. 45

Submitted by the Committee on Banks, Financial Institutions and Currencies on
~~14 DEC 2005~~

RE : Senate Bill No. 2183 prepared by the Committee

Recommending its approval in substitution of Senate Bill Nos. 208 and 1847.

Sponsors : Senators Angara and Enrile

MR. PRESIDENT:

The Committee on Banks, Financial Institutions and Currencies to which were referred Senate Bill No. 208, introduced by Sen. Sergio Osmeña III, entitled

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

Senate Bill No. 1847, introduced by Senator Edgardo J. Angara, entitled:

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

has considered the same and has the honor to report them back to the Senate with the recommendation that the attached SB No. 2183, prepared by the Committee, entitled

"AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES" OTHERWISE KNOWN AS THE "CORPORATE RECOVERY AND INSOLVENCY ACT"

be approved in substitution of Senate Bill Nos. 208 and 1847 with Senator Sergio Osmeña III, Senator Edgardo J. Angara, and the members of the Committee on Banks, Financial Institution and Currencies as authors thereof.

This report includes, aside from the proposed substitute bill, Senate Bill No. 2183 narration of discussions and positions considered by the Committee

Respectfully submitted:


EDGARDO J. ANGARA
Chairman

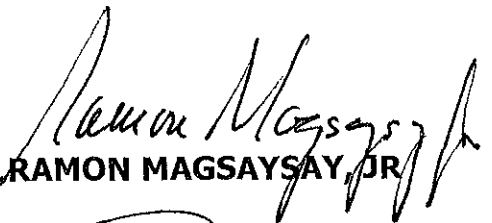
Committee on Banks, Financial Institutions
and Currencies


JUAN PONCE ENRILE
Vice Chairman

Members:

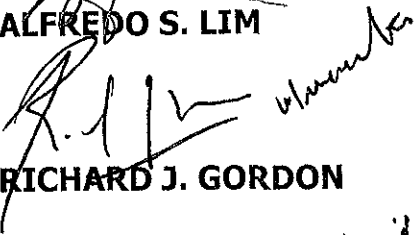
with Amendments

SERGIO OSMEÑA III


RAMON MAGSAYSAY, JR.


ALFREDO S. LIM


RODOLFO G. BIAZON



RICHARD J. GORDON

MANUEL B. VILLAR JR.

with proposed amendments

MAR ROXAS

Ex Officio Members:


JUAN M. FLAVIER
President Pro Tempore


FRANCIS N. PANGILINAN
Majority Floor Leader

May Amend:

AQUILINO Q. PIMENTEL, JR.
Minority Floor Leader

HON. FRANKLIN M. DRILON
Senate President
Pasay City

COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES

SUMMARY OF PROCEEDINGS

I. BACKGROUND

The absence of orderly and effective insolvency procedures can aggravate economic and financial crises. Without effective procedures that are applied in a predictable 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 debtors and their employees may not be adequately protected and different creditors may not be treated equitably.

In contrast, 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. For example, an effective insolvency system provides an important pillar of support for the domestic banking system by enabling banks to curtail the deterioration of the quality of their claims, whether through a court-approved restructuring or, where necessary, through an efficient liquidation. In the context of financial crises, an orderly and effective insolvency system can provide an important means of ensuring adequate private sector contribution to the resolution of such crises. Most importantly, such procedures induce greater caution in the incurrence of liabilities by debtors and greater confidence in creditors when extending credit or rescheduling their claims, thereby encouraging a healthy credit culture and discipline.

A. History

The country's insolvency procedures were developed gradually in a span of almost a century through various legislations, presidential decrees, court-issued rules and decisions and administrative regulations. This piece-meal evolution led to the now fragmented and unclear insolvency proceedings, the substantive and procedural basis of which are scattered in different issuances.

1. Insolvency Law

The Philippine insolvency law was enacted in by the Philippine Legislature under the authority of the United States on May 20, 1909 as Act No. 1956. The Philippine Insolvency Law deals with three remedies: suspension of payments, voluntary insolvency, and involuntary insolvency.

The Insolvency Law is now antiquated. It does not provide for corporate rehabilitation and its provisions on stay order do not effectively cover actions on enforcement by creditors. As a consequence, it is seldom invoked and virtually fell into disuse.

2. PD 902-A and its amendments

In 1976, Pres. Ferdinand Marcos issued PD 902-A which re-organized the SEC and placed the Agency under the administrative

supervision of the Office of the President. Various amendments thereof expanded SEC's jurisdiction which led to the expansion of remedies allowable to an ailing corporation, namely, (1) suspension of payments, (2) rehabilitation (3) dissolution.

3. SEC Rules

With the existence of the Insolvency law, which is clearly obsolete, and PD 902-A, which is merely skeletal, the SEC promulgated rules to cover and govern petitions of suspension of payment and rehabilitation. On December 30, 1999, the SEC adopted formal rules of procedure on corporate recovery, which Rules took effect in January 15, 2000.

4. Republic Act 8799 (the Securities Regulation Code)

In 2000, Republic Act 8799, otherwise known as the Securities Regulation Code (SRC), was enacted. Under this law, the quasi-judicial functions of the SEC over corporate recovery cases were transferred to the Regional Trial Courts (RTC). The enactment of the SRC gave rise to even more pressing need for a piece of legislation that will address the resolution of corporate recovery and insolvency cases now pending in the regular courts.

5. Interim Rules of Procedure issued by the Supreme Court

In the interim period that the much-needed law is yet to be enacted, the Supreme Court took the initiative in issuing the Interim Rules of Procedure on Corporate Rehabilitation to address the need for a more structured set of rules.

While the Interim Rules made significant changes to rehabilitation proceedings, the underlying substantive law, P.D. 902-A, provides limited remedies and may prove to be inadequate in dealing with the requirements of a modern and complex business environment.

At present, distressed corporations are limited to a court-supervised rehabilitation process, which could be too costly for companies with small capitalization.

The Insolvency Law, on the other hand, does not provide for corporate rehabilitation and its provisions on stay order do not effectively cover actions on enforcement by creditors.

There is therefore a pressing need for legislative reform in the areas of insolvency and rehabilitation.

B. Committee Action

The dearth of comprehensive orderly and effective insolvency procedures is much felt in the corporate setting. Thus, the proposed Corporate Recovery and Insolvency Act, which was consolidated from Senate Bill Nos. 208 (by Senator Sergio Osmeña III) and 1847 (by Senator Edgardo J. Angara) which

were filed during the Thirteenth Congress and referred to the Committee on Banks, Financial Institutions and Currencies.

1. During the Thirteenth Congress, the Committee on Banks, Financial Institutions and Currencies (the "Committee") conducted public hearings on the proposed bills on November 9 and 26, 2004. At the latter date, the Corporate Recovery Act Technical Working Group (TWG) was formed, with Commissioner Joselia Poblador as the appointed Presiding Officer.
2. The TWG was composed of the Senators' representatives and the following resource persons:
 - a) COMMISSIONER JOSELIA POBLADOR Securities and Exchange Commission
 - b) ATTY. TEODORO REGALA – Founding Partner, ACCRA Law Office
 - c) ATTY. GILBERT GALLOS - ACCRA Law Office
 - d) ATTY. FRANCIS LIM – President, Philippines Stock Exchange (PSE)
 - e) MR. JOHN RYAN - Director, Transaction Advisory Service Inc.
 - f) ATTY. JOSE LOTILLA – Financial Executives Institute of the Philippines (FINEX)
 - g) MR. ED GANA - Financial Executives Institute of the Philippines (FINEX)
 - h) ATTY. MANUEL YNGSON – Founding Chairman and President, Corporate Recovery and Insolvency Practitioners Association of the Phil. (INSOLPHIL)
 - i) MS. NOEMI JAVIER – Capital Market Development Council (CMDC)
 - j) ATTY. FLORENCIO ORENDAIN
 - k) ATTY. MARCIAL BALGOS; and
 - l) ATTY. RUDYARD ARBOLADO
3. TWG meetings were held on the following dates:

Dec 22, 2004
January 18, 2005
January 27, 2005
February 2, 2005
February 23, 2005
March 4, 2005
March 10, 2005
March 21, 2005
April 11, 2005

June 15, 2005
June 29, 2005
July 15, 2005
Sept 6, 2005

The TWG commenced the series of meetings with a comprehensive study of the international best practices as discussed in various literature published by the International Monetary Fund (IMF), the WorldBank, the United Nations Commission on International Trade Law (UNCITRAL), the Asian Development Bank (ADB) and the Working Group on the International Financial Crises.

The international best practices, inasmuch as practicable, were incorporated in the bill. The resource persons endeavoured to likewise incorporate in the bill their experiences in actual rehabilitation and liquidation proceedings to come up with a piece of legislation which is responsive to the local setting. Moreover, the procedural provisions were culled out from the two Senate Bills to leave the promulgation of which to the Supreme Court.

4. On October 3, 2005, the TWG presented its proposed substitute bill to the Committee. Subsequently, the TWG conducted two (2) other meetings on October 10 and 19, 2005 to further fine-tune the bill.
5. The discussions in the hearings and TWG meetings, as well as the comments and suggestions in the position papers submitted to the Committee, were taken into consideration in the drafting of the Substitute Bill.

C. SUMMARY OF THE BILL

1. Policy

An insolvent juridical debtor and its creditors must collectively resolve and adjust competing claims and property rights. Through the Corporate Recovery and Insolvency Act (**CRIA**), the State hopes that it will assist in ensuring a timely, fair, transparent, effective and efficient rehabilitation or liquidation of an insolvent juridical debtor.

2. Nature of Proceedings

The proceedings under CRIA shall be *in rem* in nature and shall be conducted in a summary and non-adversarial matter.

3. Coverage

The CRIA does not include within its coverage banks, insurance companies, pre-need companies, cooperatives, and national and local government units. The CRIA is applicable to government financial institutions (other than banks) and government owned or controlled corporations, unless their charters provide otherwise.

4. Procedural Rules and Designated Courts

The Supreme Court is responsible for the formulation of the procedural rules to implement the CRIA. The Supreme Court is also vested with the power to designate courts to hear and determine cases brought under the CRIA.

5. Who is an Insolvent under CRIA?

A debtor is considered insolvent if it is generally unable to pay its liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its assets.

6. Remedies under the CRIA

There are three remedies under the CRIA: court-supervised rehabilitation, pre-negotiated rehabilitation, and out-of-court or informal restructuring agreements or rehabilitation plans. A debtor may also choose to directly undergo, or convert any of the aforementioned relief into, liquidation.

7. Court Supervised Rehabilitation

a) Initiation of Proceedings

Court supervised rehabilitation (**CSR**) may be initiated by either the insolvent debtor or creditor/s.

An Insolvent debtor may file a verified petition for CSR with the court. The petition shall establish the insolvency of the debtor and include the schedule of debts, inventory of assets, rehabilitation plan and names of the nominees for rehabilitation receiver.

A creditor or group of creditors with claims of at least P1.0 million or 25% of the subscribed capital stock or partners' contributions of the debtor may file a verified petition for CSR. The petition shall include the rehabilitation plan and names of the nominees for rehabilitation receiver.

b) Administration of Proceedings

If the court finds the petition sufficient in form and substance, it will issue a commencement order within 5 working days from the filing of the petition. The issuance of the commencement order signals the start of the rehabilitation proceedings. The commencement order shall, among others, (a) appoint a rehabilitation receiver, (b) prohibit the debtor's suppliers from withholding supply of goods and services, (c) direct all creditors to file their claims, and (d) set the case for initial hearing.

The commencement order shall also include a suspension or stay order (y) suspending all actions or proceedings for the enforcement of claims or judgments against the debtor and (z) prohibiting debtor from selling, encumbering or disposing of any of its properties and from making any payment of its liabilities. The suspension order, however

shall not apply to (a) cases on appeal in the Supreme Court at the time of the issuance of the commencement order, (b) the enforcement of claims against sureties and other persons solidarily liable with the debtor and third party mortgagors, and (c) the sale by licensed brokers or dealers of pledged securities pursuant to a securities pledge or margin agreement.

The stay order shall be effective for a period of 3 months from the date of the filing of the petition, extendible for 3 months a time, with the total extension not to exceed 15 months.

Unless cancelled by the court, all contracts of the debtor shall remain in force. The issuance of the commencement order or stay order shall not diminish or impair the security of the secured creditors, except that the stay order may suspend their rights to enforce their security. The court, however, may allow the secured creditor to enforce his security or foreclose on the property of the debtor constituting the security if said security or property is not necessary for rehabilitation.

The court may modify or terminate the stay order if it is proven that a creditor does not have adequate protection over the property constituting its security or that the value of the claim secured by the debtor's property (which is not necessary for rehabilitation) exceeds the fair market value of the said property.

At the initial hearing, the court shall determine which creditors timely filed their claims and hear any objection to the appointed rehabilitation receiver or to the rehabilitation plan. A creditor who failed to file its claim shall not be entitled to participate in the rehabilitation proceedings, but shall be entitled to receive distributions therefrom.

After the initial hearing, the rehabilitation receiver shall submit to the court his report on whether or not to give due course to the petition. The rehabilitation receiver may likewise recommend the liquidation of the debtor.

The rehabilitation receiver shall establish a preliminary registry of claims. Interested parties may challenge or oppose any claim therein.

The confirmation of the rehabilitation plan shall bind the debtor and persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the Rehabilitation Plan or whether or not their claims have been scheduled.

c) The Rehabilitation Receiver

A rehabilitation receiver must be a resident citizen, knowledgeable of insolvency, possess good moral character and have no conflict of interest. His role is to preserve the value of the assets of the debtor and implement the rehabilitation plan. He may be removed for cause

by the court, *motu proprio* or upon motion of creditors holding 50% of the total liabilities of the debtor.

d) Post-Commencement Date Actions

The court may, upon the recommendation of the rehabilitation receiver, authorize the sale of the debtor's assets if the assets are perishable, susceptible to devaluation or are otherwise in jeopardy.

The court may rescind or declare null and void (a) any sale or disposal of debtor's property which is not made in the ordinary course of business or (b) any transaction of the debtor occurring prior to the issuance of the commencement order which was executed with intent to defraud creditor/s or gives undue preference to any creditor.

e) Liability of Directors and Officers

Directors and officers of the debtor shall be liable up to double the value of the property sold, embezzled or otherwise disposed of if they knowingly dispose of debtor's property other than in the ordinary course of business, approve fraudulent or grossly disadvantageous transactions, or conceal, embezzle or misappropriate debtor's property.

f) Rehabilitation Plan

The CRIA provides for the minimum contents of a rehabilitation plan. As a rule, the rehabilitation plan is submitted upon filing of the petition for CSR. The rehabilitation receiver may propose changes thereto, considering the views and comments of the debtor and creditors. The rehabilitation plan is approved by a majority of each class of creditors, the majority being based on the value of claims held by the creditors in each class. If no such majority is obtained, the rehabilitation plan is considered rejected. The court, however, exercise its cram-down power and approve the rehabilitation plan over the objection of any class of creditors under the following circumstances: (a) the rehabilitation receiver recommended the confirmation of the rehabilitation plan; (b) the rehabilitation plan would give the objecting class of creditors greater compensation (computed at net present value) than at liquidation; or (c) the shareholders of debtor loses their controlling interest in the debtor as a result of the rehabilitation plan.

A breach of the rehabilitation plan may result in the liquidation of the debtor.

8. Pre-Negotiated Rehabilitation

An insolvent debtor may choose to initially negotiate a rehabilitation plan with its creditors out-of-court. If creditors holding two-thirds of the total liabilities of the debtor, including those holding 50% each of the secured and unsecured claims, approve or endorse the rehabilitation plan, the debtor may file a verified petition with the court for the approval of such pre-negotiated rehabilitation plan (**PNR**).

If the court determines that the petition is sufficient in form and substance, it shall issue an order allowing any creditor to oppose the petition and a suspension or stay order (similar to the one discussed under CSR). If there are no objections, the court will approve the rehabilitation plan. If there are objections, the court will hear them. The court has a maximum of 60 days from the time of the filing of petition to approve the rehabilitation plan. The rehabilitation plan shall be deemed approved if the court fails to act within the 60-day period.

The approval of the rehabilitation plan shall discharge the debtor from all obligations with respect to the claims and shall bind all creditors.

9. Out-of-court or Informal Restructuring Agreements or Rehabilitation Plans¹

The CRIA sets the minimum requirements for out-of-court or informal restructuring agreements or rehabilitation plans such as debtor's consent thereto and approval of creditors holding 67% of the secured claims, 75% of the unsecured claims and 80% of the total obligations, secured or unsecured. There shall be a standstill period pending the negotiation and finalization of the out-of-court or informal restructuring agreements or rehabilitation plans which shall not exceed 120 days. The standstill period shall be approved by creditors holding 75% of the total liabilities of the debtor.

The approval of the restructuring agreement or rehabilitation plan shall discharge the debtor from all obligations with respect to the claims and shall bind all creditors.

10. Liquidation in Insolvency

There are two kinds of liquidation proceedings – voluntary and involuntary. In voluntary liquidation, the insolvent debtor may directly file a verified petition for liquidation with the court attaching a schedule of its debts, inventory of assets and names of nominees for liquidator. The insolvent debtor may also convert proceedings for CSR or PNR into liquidation by filing a motion with the court. In involuntary liquidation, three or more creditors with claims of at least P1 million or holding 25% of the total paid-up capital or partners' contributions of the debtor may directly file a verified petition for the liquidation of the debtor. Such creditors may also convert proceedings for CSR or PNR into liquidation by filing a motion with the court.

If the court finds the petition sufficient in form and substance, it shall issue a liquidation order declaring the debtor insolvent which shall have the following effects: the debtor shall be deemed dissolved, the legal title to the assets of the debtor shall be deemed vested in the liquidator, and all contracts of the debtor are deemed terminated. The liquidation order shall not affect the rights of the secured creditors to enforce his security, although he may waive his security.

¹ Atty. Yngson has expressed his concern that this chapter may violate the constitution (non-impairment clause, due process clause, etc.).

The Liquidator is elected by creditors who filed their claims within the period set by the court. A secured creditor cannot vote unless he waives his security. The liquidator has the power to recover all the assets belonging to the debtor, take possession thereof, and sell the same. The liquidator also has the duty to prepare the registry of claims which, after entertaining any opposition or challenge, shall be submitted to the court for final approval.

The liquidator shall submit a liquidation plan which shall govern the manner of disposition of the assets of the debtor. In the disposition of the assets, the Civil Code provisions on concurrence and preference of credits shall be observed.

11. Cross-Border Insolvency

The occurrence of cross-border insolvency is anticipated by giving the Court the authority to hear petitions in connection with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction. In this connection, the Court may issue orders suspending any actions to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines, requiring the surrender of property of the foreign entity to the foreign representative, or providing other necessary relief.

S E N A T E

S. No. 2183

(In substitution of Senate Bill Nos. 208 and 1847)

Prepared by the Committee on Banks, Financial Institutions and Currencies,
with Senators Sergio Osmeña III and Edgardo J. Angara, as authors.

**AN ACT
PROVIDING FOR THE REHABILITATION OR LIQUIDATION
OF FINANCIALLY DISTRESSED ENTERPRISES**

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

CHAPTER I – GENERAL PROVISIONS

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

5
6 **Section 2. Declaration of Policy** - It is the policy of the State to
7 encourage an insolvent juridical debtor and its creditors to collectively and
8 realistically resolve and adjust competing claims and property rights. In
9 furtherance thereof, the State shall ensure a timely, fair, transparent, effective
10 and efficient rehabilitation or liquidation of an insolvent juridical debtor. The
11 rehabilitation or liquidation shall be made with a view to ensuring or maintaining
12 certainty and predictability in commercial affairs, shall preserve and maximize the
13 value of the assets of the debtor, shall recognize creditor rights and respect

1 priority of claims, and shall ensure equitable treatment of creditors who are
2 similarly situated.

3

4 **Section 3. Nature of Proceedings** – The proceedings under this Act
5 shall be *In Rem* in nature and shall be conducted in a summary and non-
6 adversarial manner.

7

8 **Section 4. Definition of Terms** – As used in this Act the term:

9 a. "Administrative Expense" shall refer to those reasonable and
10 necessary expenses:

11 (i) incurred in connection with the filing of a petition under the
12 provisions of this Act;

13 (ii) arising from or in connection with the conduct of the
14 proceedings under this Act, including those incurred for the
15 rehabilitation or liquidation of the Debtor;

16 (iii) incurred in the ordinary course of the business of the Debtor
17 after the Commencement Date; or

18 (iv) for the payment of new loans obtained after the
19 Commencement Date to finance the rehabilitation of the
20 Debtor.

21 (v) incurred for the fees of the Rehabilitation Receiver or
22 Liquidator and of the professionals engaged by them;

23 (vi) that are otherwise authorized or mandated under this Act.

24 b. "Claim" shall refer to a right to payment or a right to an equitable
25 remedy that results in payment by the corporation, whether arising
26 from a debt or other type of legal obligation, whether liquidated or

- 1 unliquidated, fixed or contingent, matured or unmatured, disputed
2 or undisputed.
- 3 c. "Commencement Date" shall refer to the date on which the Court
4 issues the order referred to in Section 10 of this Act.
- 5 d. "Commencement Order" shall refer to the order issued by the Court
6 under Section 10 of this Act.
- 7 e. "Court" shall refer to the court designated by the Supreme Court to
8 hear and determine, at the first instance, the cases brought under
9 this Act.
- 10 f. "Creditor" shall refer to a natural or juridical person which has a
11 Claim against the Debtor that arose on or before the
12 Commencement Date.
- 13 g. "Date of Liquidation" shall refer to the date on which the Court
14 issues the order referred to in Section 71 of this Act.
- 15 h. "Debtor" shall refer to a juridical legal entity duly organized and
16 existing under Philippine laws, unless specifically excluded by a
17 provision of this Act.
- 18 i. "Encumbered Property" shall refer to real or personal property of
19 the Debtor upon which a Lien attaches.
- 20 j. "Insolvent" shall refer to the financial condition of a Debtor that is
21 generally unable to pay its liabilities as they fall due in the Ordinary
22 Course of Business or that has liabilities that are greater than its
23 assets.
- 24 k. "Lien" shall refer to a statutory or contractual charge on real or
25 personal property that legally entitles a Creditor to resort to said
26 property for payment of the Claim upon which said lien attaches.

- 1 l. "Liquidation" shall refer to the proceedings under Chapter V of this
2 Act.
- 3 m. "Liquidation Order" shall refer to the order issued by the Court
4 under Section 71 of this Act.
- 5 n. "Liquidator" shall refer to the natural person or juridical entity
6 appointed as such by the Court and entrusted with such powers
7 and duties as set forth in this Act, *Provided* that, if the Liquidator is
8 a juridical entity, it must designate a natural person who possesses
9 all the qualifications and none of the disqualifications as its
10 representative, it being understood that the juridical entity and the
11 representative are solidarily liable for all obligations and
12 responsibilities of the Liquidator.
- 13 o. "Ordinary Course of Business" shall refer to transactions consistent
14 with both (i) the operation of the Debtor's business prior to
15 insolvency proceedings, and (ii) ordinary business terms.
- 16 p. "Rehabilitation Receiver" shall refer to the natural person or
17 juridical entity appointed as such by the Court and entrusted with
18 such powers and duties as set forth in this Act, *Provided* that, if the
19 Rehabilitation Receiver is a juridical entity, it must designate a
20 natural person who possesses all the qualifications and none of the
21 disqualifications as its representative, it being understood that the
22 juridical entity and the representative are solidarily liable for all
23 obligations and responsibilities of the Rehabilitation Receiver.
- 24 q. "Rehabilitation Plan" shall refer to a plan by which the financial
25 well-being and viability of an Insolvent Debtor can be restored
26 using various means, including, but not limited to, debt
27 forgiveness, debt rescheduling, debt-equity conversion and sale of

1 the business (or parts of it) as a going concern, or setting-up of
2 new business entity as prescribed in Section 41 hereof.

3 r. "Secured Claim" shall refer to a Claim that is secured by a Lien.

4 s. "Secured Creditor" shall refer to a Creditor with a Secured Claim.

5 t. "Securities Market Participant" shall refer to a broker, dealer,
6 underwriter, transfer agent, or other juridical persons transacting
7 securities in the capital market.

8 u. "Shareholder" shall refer to a holder of shares of a corporation, or
9 to a member of a non-stock corporation or association, or a partner
10 in a partnership.

11 v. "Unsecured Claim" shall refer to a Claim that is not secured by a
12 Lien.

13 w. "Unsecured Creditor" shall refer to a Creditor with an Unsecured
14 Claim.

15
16 **Section 5. Exclusions** – The term Debtor does not include banks,
17 insurance companies, pre-need companies, cooperatives and national and local
18 government agencies or units. For purposes of this Section:

19 a. "Bank" shall refer to any duly licensed bank or quasi-bank that is
20 potentially or actually subject to conservatorship, receivership, or
21 Liquidation proceedings under the New Central Bank Act or
22 successor legislation.

23 b. "Insurance Company" shall refer to those companies that are
24 potentially or actually subject to insolvency proceedings under the
25 Insurance Code.

26 c. "Pre-Need Company" refers to any corporation authorized/licensed
27 to sell or offer to sell Pre-Need Plans.

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d. "Cooperatives" shall refer to duly registered associations of persons, with a common bond of interest, who have voluntarily joined together to achieve lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risk and benefits of the undertaking in accordance with universally accepted cooperative principles.

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

Section 6. Promulgation of Procedural Rules – The rules of pleading, practice, and procedure to govern the proceedings brought under this Act shall be promulgated by the Supreme Court.

CHAPTER II
COURTSUPERVISED REHABILITATION

A. INITIATION OF PROCEEDINGS

Section 7. Petition by Debtor. When approved by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose, an insolvent Debtor may apply for, and seek, Rehabilitation by filing a petition for Rehabilitation with the Court. The petition shall be verified, establish the

1 insolvency of the Debtor and the viability of its Rehabilitation, and contain,
2 whether as an attachment or as part of the body of the petition, as a minimum:

- 3 a. a schedule of the Debtor's debts and liabilities including a list of
4 creditors with their addresses, amounts of claims and collaterals, or
5 securities, if any;
- 6 b. an inventory of all its assets including receivables and claims
7 against third parties;
- 8 c. a Rehabilitation Plan, and
- 9 d. the names of at least three nominees to the position of
10 Rehabilitation Receiver.

11

12 **Section 8. Petition by Creditor/s.** Any Creditor or group of Creditors
13 with a Claim of, or the aggregate of whose Claims is, at least One Million Pesos
14 or at least twenty five percent (25%) of the subscribed capital stock or partners'
15 contributions, whichever is higher, may apply for and seek the Rehabilitation of
16 the Debtor by filing a petition for the Rehabilitation of the Debtor with the Court.
17 The petition shall be verified and shall establish:

- 18 a. That there is no genuine issue of fact or law on the Claim/s of the
19 petitioner/s, and that the due and demandable payments thereon
20 have not been made for at least sixty (60) days; and
- 21 b. That there is a substantial likelihood that the Debtor may be
22 rehabilitated.

23 The petition shall include, whether as an attachment or as part of the
24 body of the petition, a Rehabilitation Plan and the names of at least three (3)
25 nominees to the position of Rehabilitation Receiver.

26 **Section 9. Action on the Petition.** If the Court finds the Petition to
27 be sufficient in form and substance, it shall, within five (5) working days from the

1 filing of the petition, issue a Commencement Order. If, within the same period,
2 the Court finds the petition deficient in form or substance, the Court may, in its
3 discretion, give the petitioner/s a reasonable period of time within which to
4 amend or supplement the petition, or to submit such documents as may be
5 necessary or proper to put the petition in proper order. In such case, the five (5)
6 working days provided above for the issuance of the Commencement Order shall
7 be reckoned from the date of the filing of the amended or supplemental petition
8 or the submission of such documents.

9

10 **B. ADMINISTRATION OF THE PROCEEDINGS**

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12 **Section 10. Commencement of Proceedings.** The Rehabilitation
13 Proceedings shall commence upon the issuance of the Commencement Order,
14 which shall:

- 15 a. Identify the Debtor, its principal business or activity/ies, and its
16 principal place of business;
- 17 b. Summarize the ground/s for the filing of the petition;
- 18 c. Declare that the Debtor is under rehabilitation;
- 19 d. Direct the publication of the Commencement Order in a newspaper
20 of general circulation once a week for at least two (2) consecutive
21 weeks, with the first publication to be made within seven (7) days
22 from the time of its issuance;
- 23 e. If the petitioner is the Debtor, direct the service by personal
24 delivery of a copy of the Petition on each Creditor holding at least
25 ten percent (10%) of the total liabilities of the Debtor as
26 determined from the schedule attached to the petition within five
27 (5) days; If the petitioner/s is/are Creditor/s, direct the service by

1 personal delivery of a copy of the petition on the Debtor within five
2 (5) days.

3 f. Appoint a Rehabilitation Receiver, who may or may not be from
4 among the nominees of the petitioner/s;

5 g. Direct all Creditors to file their Claims with the Court at least five
6 (5) days before the initial hearing;

7 h. Prohibit the Debtor's suppliers of goods or services from
8 withholding supply of goods and services in the ordinary course of
9 business for as long as the Debtor makes payments for the services
10 or goods supplied after the issuance of the Stay Order;

11 i. Authorize the payment of Administrative Expenses as they become
12 due;

13 j. Set the case for initial hearing, which shall not be more than forty
14 (40) days from the date of filing of the petition;

15 k. Make available copies of the petition and Rehabilitation Plan for
16 examination and copying by any interested party.

17 l. State that any Creditor or the Debtor, who is not the petitioner,
18 may submit the name or nominate any other qualified person to
19 the position of Rehabilitation Receiver at least five (5) days before
20 the initial hearing;

21 m. Include a Suspension or Stay Order which shall:

22 (i) Suspend all actions or proceedings, in court or otherwise, for
23 the enforcement of Claims against the Debtor. However, the
24 suspension order shall not apply:

25 1. To cases already pending appeal in the Supreme Court as
26 at the Commencement Date; *Provided, That*, any final

1 and executory judgment arising from such appeal shall
2 be referred to the Court for appropriate action.

3 2. To the enforcement of claims against sureties and other
4 persons solidarily liable with the Debtor, and third party
5 or accommodation mortgagors;

6 3. To any form of action of customers or clients of a
7 Securities Market Participant to recover or otherwise
8 claim moneys and securities entrusted to the latter in the
9 ordinary course of the latter's business as well as any
10 action of such Securities Market Participant or the
11 appropriate regulatory agency or self-regulatory
12 organization to pay or settle such claims or liabilities..

13 (ii) Suspend all actions to enforce any judgment, attachment or
14 other provisional remedies against the Debtor;

15 (iii) Prohibit the Debtor from selling, encumbering, transferring
16 or disposing in any manner any of its properties except in
17 the ordinary course of business; and

18 (iv) Prohibit the Debtor from making any payment of its liabilities
19 outstanding as of the Commencement Date except as may
20 be provided herein.

21
22
23 **Section 11. Suspension or Stay Order.** The Suspension or Stay Order
24 shall be effective for a period of three (3) months from the date of the filing of
25 the petition. If there is a substantial likelihood that the Debtor will be
26 successfully rehabilitated, it may be extended for three (3) months at a time,
27 provided, that, in no case shall the total period of extension exceed fifteen (15)

1 months. In determining whether there is substantial likelihood for the Debtor to
2 be successfully rehabilitated, the Court shall ensure that the following minimum
3 requirements are met:

- 4 a. The Rehabilitation Receiver submits a report, based on preliminary
5 evaluation, stating that the underlying assumptions and the
6 financial goals stated in the petitioner's Rehabilitation Plan are
7 realistic, feasible and reasonable; or, if not, there is, in any case, a
8 substantial likelihood for the Debtor to be successfully rehabilitated
9 because, among others, there are sufficient assets with which to
10 rehabilitate the Debtor and there is sufficient cash flow to maintain
11 the operations of the Debtor;
- 12 b. The petition is not a sham filing intended only to delay the
13 enforcement of the rights of the Creditors, or of a Creditor, or of
14 any group of Creditors;
- 15 c. The petition, the Rehabilitation Plan and the attachments thereto
16 do not contain any materially false or misleading statements;
- 17 d. If the petitioner is the Debtor, that the Debtor has met with its
18 Creditor/s representing at least three-fourths (3/4) of its total
19 obligations and made a good faith effort to reach a consensus on
20 the Rehabilitation Plan; If the petitioner/s is a Creditor or group of
21 Creditors, That the petitioner/s has met with the Debtor and made
22 a good faith effort to reach a consensus on the Rehabilitation Plan;
23 and
- 24 e. The Debtor has not committed acts of misrepresentation or in fraud
25 of its Creditors, or a Creditor or a group of Creditors.

26

1 **Section 12. Action at the Initial Hearing.** At the initial hearing, the
2 Court shall: (a) Determine the Creditors who have made a timely and proper
3 filing of their notice of Claims; (b) Hear and determine any objection to the
4 qualifications or the appointment of the Rehabilitation Receiver and, if necessary,
5 appoint a new one in accordance with Section 20 or Section 24 hereof; (c) Direct
6 the Creditors to comment on the petition and the Rehabilitation Plan, and to
7 submit the same to the Court and to the Rehabilitation Receiver within a period
8 of not more than twenty (20) days; (d) Direct the Rehabilitation Receiver to
9 evaluate the financial condition of the Debtor and to prepare and submit to the
10 Court within forty (40) days from the initial hearing the Report mentioned in
11 Section 14 hereof.

12 .
13 **Section 13. Effect of Failure to File Notice of Claim.** A Creditor
14 whose Claim is not listed in the Schedule of Debts and Liabilities and who fails to
15 file a notice of claim in accordance with the Commencement Order but
16 subsequently files a belated Claim shall not be entitled to participate in the
17 Rehabilitation proceedings but shall be entitled to receive distributions arising
18 therefrom.

19
20 **Section 14. Report of the Rehabilitation Receiver.** Within forty (40)
21 days from the initial hearing, and with or without the comments of the Creditors
22 or any of them, the Rehabilitation Receiver shall submit a Report to the Court
23 stating his preliminary findings and recommendations on whether:

24 a. The Debtor is insolvent and if so, the causes thereof and any
25 unlawful or irregular act or acts committed by directors or officers
26 in contemplation of the insolvency of the Debtor or which may have
27 contributed to the insolvency of the Debtor;

- 1 b. The underlying assumptions, the financial goals and the procedures
- 2 to accomplish such goals as stated in the petitioner's Rehabilitation
- 3 Plan are realistic, feasible and reasonable;
- 4 c. There is a substantial likelihood for the Debtor to be successfully
- 5 rehabilitated;
- 6 d. The petition should be dismissed, or
- 7 e. the Debtor should be dissolved and liquidated.

8 **Section 15. Giving Due Course to or Dismissal of Petition, or**

9 **Conversion of Proceedings.** Within ten (10) days from receipt of the Report of
10 the Rehabilitation Receiver mentioned in Section 14 hereof, the Court may:

- 11 a. Give due course to the petition upon a finding that: (i) The Debtor
- 12 is Insolvent, and (ii) There is a substantial likelihood for the Debtor
- 13 to be successfully rehabilitated;
- 14 b. Dismiss the petition upon a finding that
- 15 (i) the Debtor is not Insolvent;
- 16 (ii) the petition is a sham filing intended only to delay the
- 17 enforcement of the rights of the Creditors, or of a Creditor,
- 18 or of any group of Creditors;
- 19 (iii) the petition, the Rehabilitation Plan and the attachments
- 20 thereto contain any materially false or misleading
- 21 statements; or
- 22 (iv) the Debtor has committed acts of misrepresentation or in
- 23 fraud of its Creditors, or a Creditor or a group of Creditors.
- 24 c. Convert the proceedings into one for the Liquidation of the Debtor
- 25 upon a finding that –
- 26 (i) the Debtor is Insolvent; and

1 (ii) either there is no substantial likelihood for the Debtor to be
2 successfully rehabilitated, or, If the petitioner is the Debtor,
3 that the Debtor has not met with its Creditor/s representing
4 at least three-fourths (3/4) of its total liabilities and made a
5 good faith effort to reach a consensus on the Rehabilitation
6 Plan; or, If the petitioner/s is a Creditor or group of
7 Creditors, that the petitioner/s has not met with the Debtor
8 and made a good faith effort to reach a consensus on the
9 Rehabilitation Plan.

10
11 **Section 16. Petition Given Due Course.** If the petition is given due
12 course, the Court shall direct the Rehabilitation Receiver to review, revise and/or
13 recommend action on the Rehabilitation Plan and submit the same or a new one
14 to the Court within a period of not more than ninety (90) days.

15
16 **Section 17. Dismissal of Petition.** If the petition is dismissed pursuant
17 to paragraph (b) of Section 15,
18 then, the Court may, in its discretion, order the petitioner to pay damages to any
19 Creditor or to the Debtor, as the case may be, who may have been injured by
20 the filing of the petition, to the extent of any such injury.

21
22 **C. THE REHABILITATION RECEIVER**

23
24 **Section 18. Qualifications of a Rehabilitation Receiver.** The
25 Rehabilitation Receiver shall have the following minimum qualifications: He

26 a. is a citizen of the Philippines;

- 1 b. is a resident of the Philippines in the six months immediately
2 preceding his nomination;
- 3 c. is of good moral character and with acknowledged integrity,
4 impartiality and independence;
- 5 d. has the requisite knowledge of insolvency and other relevant
6 commercial laws, rules and procedures, as well as the relevant
7 training and/or experience that may be necessary to enable him to
8 properly discharge the duties and obligations of a Rehabilitation
9 Receiver.; and
- 10 e. has no conflict of interest, provided, that, such conflict of interest
11 may be waived, expressly or impliedly, by a party who may
12 prejudiced thereby.

13 **Section 19. Conflict of Interest.** An individual shall be deemed to have
14 a conflict of interest if he is so situated as to be presumed to be unduly
15 influenced in the exercise of his judgment as Rehabilitation Receiver for or
16 against the Debtor or any Creditor. Without limiting the generality of the
17 foregoing, an individual shall be deemed to have a conflict of interest if:

- 18 a. He is a Creditor or stockholder of the Debtor;
- 19 b. He is engaged in a line of business which competes with that of the
20 Debtor;
- 21 c. He is, or was, within five (5) years from the filing of the petition, a
22 director, officer, or employee of the Debtor or any of the Creditors,
23 or the auditor or accountant of the Debtor;
- 24 d. He is, or was within two (2) years from the filing of the petition, an
25 underwriter of the outstanding securities of the Debtor;

- 1 e. He is related by consanguinity or affinity within the fourth civil
2 degree to any individual Creditor, or to any stockholder, director,
3 officer, employee, or underwriter of the Debtor; or
4 f. He has any other direct or indirect material interest in the Debtor or
5 any of the Creditors.
6

7 **Section 20. Appointment of the Rehabilitation Receiver.** The Court
8 shall initially appoint the Rehabilitation Receiver, who may or may not be from
9 among the *nominees of the petitioner*. However, at the initial hearing of the
10 petition, the Creditors and the Debtor who are not petitioners may nominate
11 other persons to the position. The Court may retain the Rehabilitation Receiver
12 initially appointed or appoint another who may or may not be from among those
13 nominated.
14

15 **Section 21. Oath and Bond of the Rehabilitation Receiver.** Prior to
16 entering upon his powers, duties and responsibilities, the Rehabilitation Receiver
17 shall take an oath and file a bond, in such amount to be fixed by the Court,
18 conditioned upon the faithful and proper discharge of his powers, duties and
19 responsibilities.
20

21 **Section 22. Powers, Duties and Responsibilities of the**
22 **Rehabilitation Receiver.** The Rehabilitation Receiver shall be deemed an
23 officer of the Court with the principal duty of preserving and maximizing the
24 value of the assets of the Debtor during the Rehabilitation Proceedings,
25 determining the viability of the Rehabilitation of the Debtor, preparing and
26 recommending a Rehabilitation Plan to the Court, and implementing the
27 approved Rehabilitation Plan. To this end, and without limiting the generality of

1 the foregoing, the Rehabilitation Receiver shall have the following powers, duties
2 and responsibilities:

3 a. To verify the accuracy of the factual allegations in the petition and
4 its annexes;

5 b. To verify and correct, if necessary, the inventory of all of the
6 assets of the Debtor, and their valuation;

7 c. To verify and correct, if necessary, the schedule of debts and
8 liabilities of the Debtor;

9 d. To evaluate the validity, genuineness, and true amount of all the
10 Claims against the Debtor;

11 e. To take possession, custody and control, and to preserve the value
12 of all the property of the Debtor;

13 f. To sue and recover, with the approval of the Court, all amounts
14 owed to, and all properties pertaining to the Debtor;

15 g. To have access to all information necessary, proper or relevant to
16 the operations and business of the Debtor and for its
17 Rehabilitation;

18 h. To sue and recover, with the approval of the Court, all property or
19 money of the Debtor paid, transferred or disbursed in fraud of the
20 Debtor or its Creditors, or which constitute undue preference of
21 Creditor/s;

22 i. To monitor the operations and the business of the Debtor to ensure
23 that no payments or transfers of property are made other than in
24 the ordinary course of business;

25 j. With the Court's approval, to engage the services of or to employ
26 persons or entities to assist him in the discharge of his functions;

- 1 k. To determine the manner by which the Debtor may be best
2 rehabilitated, to review, revise and/or recommend action on the
3 Rehabilitation Plan and submit the same or a new one to the Court
4 for approval; and
- 5 l. To implement the Rehabilitation Plan as approved by the Court, if
6 so provided under the Rehabilitation Plan;
- 7 m. To exercise such other powers as may from time to time be
8 conferred upon him by the Court; and
- 9 n. To submit a status report on the Rehabilitation proceedings every
10 quarter or as may be required by the Court *motu proprio*, or upon
11 motion of any Creditor, or as may be provided in the Rehabilitation
12 Plan.

13

14 **Section 23. Removal of the Rehabilitation Receiver.** The
15 Rehabilitation Receiver may be removed at any time by the Court for cause,
16 either *motu proprio* or upon motion by any Creditor or Creditors holding more
17 than fifty percent (50%) of the total obligations of the Debtor.

18

19 **Section 24. Vacancy.** In case the position of Rehabilitation Receiver is
20 vacated for any reason whatsoever, the Court shall direct the Debtor and the
21 Creditors to submit the name/s of their nominee/s to the position. The Court may
22 appoint any of the qualified nominees, or any other person qualified for the
23 position.

24

25 **Section 25. Compensation.** The Rehabilitation Receiver and the
26 persons and entities engaged or employed by him to assist in the discharge of
27 his powers and duties shall be entitled to such reasonable compensation as may

1 be determined by the Rehabilitation Court, which shall not exceed the maximum
2 amount as may be prescribed by the Supreme Court.

3

4 **D. DETERMINATION OF CLAIMS**

5

6 **Section 26. Registry of Claims.** Within twenty (20) days from his
7 assumption into office, the Rehabilitation Receiver shall establish a preliminary
8 registry of claims. The Rehabilitation Receiver shall make the registry available
9 for public inspection and provide publication notice to Creditors and Shareholders
10 on where and when they may inspect it. All claims included in the registry of
11 claims must be duly supported by sufficient evidence.

12

13 **Section 27. Opposition or Challenge of Claims.** Within thirty (30)
14 days from the expiration of the period stated in the immediately preceding
15 Section, Creditors, Shareholders and other interested parties may submit a
16 challenge to a Claim or Claims to the Court, serving a certified copy on the
17 Rehabilitation Receiver and the Creditor holding the challenged Claim. Upon the
18 expiration of the thirty (30) day period, the Rehabilitation Receiver shall submit
19 to the Court the registry of claims containing the undisputed claims that have not
20 been subject to challenge.

21

22 **Section 28. Appeal.** Any decision of the Rehabilitation Receiver
23 regarding a Claim may be appealed to the Court.

24

25 **E. USE, PRESERVATION AND DISPOSAL OF ASSETS AFTER**
26 **COMMENCEMENT DATE.**

27

1 **Section 29. Use or Disposition of Assets.** Except as otherwise
2 provided herein, no funds or property of the Debtor shall be used or disposed of
3 except in the Ordinary Course of Business of the Debtor, or unless necessary to
4 finance the Administrative Expenses of the rehabilitation proceedings.

5
6 **Section 30. Rescission or Nullity of Sale, Payment, Transfer or**
7 **Conveyance of Assets.** The Court may rescind or declare as null and void any
8 sale, payment, transfer or conveyance of the Debtor's unencumbered property or
9 any encumbering thereof by the Debtor or its agents or representatives which
10 are not in the ordinary course of the business of the Debtor.

11
12 **Section 31. Sale of Assets.** The Court, upon application of the
13 Rehabilitation Receiver, may authorize the sale of unencumbered property of the
14 Debtor outside the ordinary course of business upon a showing that the
15 property, by its nature or because of other circumstance, is perishable, costly to
16 maintain, susceptible to devaluation or otherwise in jeopardy.

17
18 **Section 32. Assets of Debtor Held by Third Parties.** Third parties
19 who have in their possession or control property of the Debtor shall not transfer,
20 convey, or otherwise dispose of the same to persons other than the Debtor,
21 unless otherwise upon prior approval of the Rehabilitation Receiver. The
22 Rehabilitation Receiver may also:

- 23 a. Demand the surrender or the transfer of the possession or control
24 of such property to the Rehabilitation Receiver or any other person,
25 subject to payment of the Claims secured by any possessory Lien/s
26 thereon;

- 1 b. Allow said third parties to retain possession or control, if such an
2 arrangement would more likely preserve or increase the value of
3 the property in question or the total value of the assets of the
4 Debtor; or
- 5 c. Undertake any other disposition of the said property as may be
6 beneficial for the rehabilitation of the Debtor, after notice and
7 hearing, and approval of the Court.

8

9 **Section 33. Assets of Third Parties Held by Debtor.** The Court may
10 authorize the sale, transfer, conveyance or disposal of Encumbered Property of
11 the Debtor, or property of others held by the Debtor where there is a security
12 interest pertaining to third parties under a financial, credit or other similar
13 transactions if, upon application of the Rehabilitation Receiver and with the
14 consent of the affected owners of the property, or Secured Creditor/s in the case
15 of Encumbered Property of the Debtor, and after notice and hearing, the Court
16 determines that:

- 17 a. Such sale, transfer, conveyance or disposal is necessary for the
18 continued operation of the Debtor's business;
- 19 b. The Debtor has made arrangements to provide a substitute Lien or
20 ownership right that provides an equal level of security for the
21 counter-party's claim or right.

22

23 **Section 34. Assets Subject to Rapid Obsolescence, Depreciation,**
24 **and Diminution of Value.** Upon the application of a Secured Creditor holding a
25 Lien against or ownership interest in property held by the Debtor that is subject
26 to potentially rapid obsolescence, depreciation or diminution in value, the Court
27 shall, after notice and hearing, order the Debtor or Rehabilitation Receiver to

1 take reasonable steps necessary to prevent the depreciation. If depreciation
2 cannot be avoided and such depreciation is jeopardizing the security or property
3 interest of the Secured Creditor or owner, the Court shall:

- 4 a. Allow the Encumbered Property to be foreclosed upon by the
5 Secured Creditor according to the relevant agreement between the
6 Debtor and the Secured Creditor, *Provided, That*, the proceeds of
7 the sale will be distributed in accordance with the order prescribed
8 under the rules of concurrence and preference of credits; or
- 9 b. Upon motion of, or with the consent of the affected Secured
10 Creditor, order the conveyance of a Lien against or ownership
11 interest in substitute property of the Debtor to the Secured
12 Creditor, *Provided*, that other Creditors holding Liens on such
13 property, if any, do not object thereto; or
- 14 c. Allow the sale or disposition of the property, *Provided*, that the sale
15 or disposition will maximize the value of the property for the
16 benefit of the Secured Creditor and the Debtor and the proceeds of
17 the sale will be distributed in accordance with the order prescribed
18 under the rules of concurrence and preference of credits.

19
20 **F. AVOIDANCE PROCEEDINGS**

21
22 **Section 35. Rescission or Nullity of Certain Pre-Commencement**
23 **Date Transactions.** Any transaction occurring prior to Commencement Date
24 entered into by the Debtor or involving its funds or assets may be rescinded or
25 declared null and void on the ground that the same was executed with intent to
26 defraud a Creditor or Creditors or which constitute undue preference of

1 Creditors. Without limiting the generality of the foregoing, a disputable
2 presumption of such design shall arise if the transaction:

3 a. Provides unreasonably inadequate consideration to the Debtor and
4 is executed within ninety (90) days prior to the Commencement
5 Date;

6 b. Involves an accelerated payment of a claim to a Creditor within
7 ninety (90) days prior to the Commencement Date;

8 c. Provides security or additional security executed within ninety (90)
9 days prior to the Commencement Date;

10 d. Involves Creditors, where a Creditor obtained, or received the
11 benefit of, more than its pro rata share in the assets of the Debtor,
12 executed at a time when the Debtor was Insolvent; or

13 e. Is intended to defeat, delay or hinder the ability of the Creditors to
14 collect Claims where the effect of the transaction is to put assets of
15 the Debtor beyond the reach of Creditors or to otherwise prejudice
16 the interests of Creditors.

17 *Provided, however,* That nothing in this Section shall prevent the Court
18 from rescinding or declaring as null and void a transaction on other grounds
19 provided by law.

20

21 **Section 36. Actions for Rescission or Nullity.** The Rehabilitation
22 Receiver or, with his conformity, any Creditor, may initiate and prosecute any
23 action to rescind, or declare null and void any transaction described in the
24 immediately preceding paragraph. If the Rehabilitation Receiver does not
25 consent to the filing or prosecution of such action, any Creditor may seek leave
26 of the Court to commence said action.

27

1 **G. TREATMENT OF CONTRACTS**

2

3 **Section 37. Treatment of Contracts.** Unless cancelled by virtue of a
4 judgment of a Court of competent jurisdiction issued prior to the issuance of the
5 Commencement Order, or at anytime thereafter by the Court before which the
6 rehabilitation proceedings are pending, all valid and subsisting contracts of the
7 Debtor with Creditors and other third parties as at the Commencement Date shall
8 continue in force,; *Provided,* That within ninety (90) days following the
9 commencement of proceedings, the Debtor, with the consent of the
10 Rehabilitation Receiver, shall notify each contractual counter-party of whether it
11 is confirming the particular contract. Contractual obligations of the Debtor
12 arising or performed during this period, and afterwards for confirmed contracts,
13 shall be an Administrative Expense. Contracts not confirmed within the required
14 deadline shall be considered terminated. Claims for actual damages, if any,
15 arising as a result of the election to terminate a contract shall be considered a
16 *pre-commencement Claim against the Debtor.* Nothing contained herein shall
17 prevent the cancellation or termination of any contract of the Debtor for any
18 ground provided by law.

19

20 **H. TREATMENT OF SECURED CREDITORS**

21

22 **Section 38. No Diminution of Secured Creditor Rights.** The
23 issuance of the Commencement Order and the Stay Order, and any other
24 provision of this Act, shall not be deemed in any way to diminish or impair the
25 security or Lien of a Secured Creditor, or the value of his Lien or Security, except
26 that his right to enforce said security or Lien may be suspended during the term
27 of the Stay Order.

1 The Court, upon motion or recommendation of the Rehabilitation
2 Receiver, may allow a Secured Creditor to enforce his security or Lien, or
3 foreclose upon property of the Debtor securing his/its Claim, if the said property
4 is not necessary for the rehabilitation of the Debtor and the proceeds of the sale
5 will be distributed in accordance with the order prescribed under the rules of
6 concurrence and preference of credits. The Secured Creditor and/or the other
7 Lien holders shall be admitted to the Rehabilitation Proceedings only for the
8 balance of his Claim, if any.

9 A Secured Creditor shall enjoy preference in the payment of his Claim with
10 respect to income or cash generated from the use, utilization, employment,
11 application or exploitation of the Debtor's Property securing his Claim.

12

13 **Section 39. Modification or Termination of Stay Order.** At any time
14 during the effectivity of the Stay Order, the Court, *motu proprio* or upon motion,
15 may terminate, modify or set conditions for the continuance of the Stay Order, or
16 relieve a Claim from the coverage thereof, upon a showing that: (a) a Creditor
17 does not have adequate protection over property securing its Claim, or (b) the
18 value of a Claim secured by a Lien on property which is not necessary for
19 Rehabilitation of the Debtor exceeds the fair market value of said property.

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

22 a. The Debtor fails or refuses to honor an agreement with the Creditor
23 to keep the property insured; or

24 b. The Debtor fails or refuses to take commercially reasonable steps
25 to maintain and preserve the property; or

26 c. The property has depreciated since the Commencement Date to an
27 extent that the Creditor is undersecured.

1 Upon a showing of a lack of adequate protection, the Court shall order the
2 Debtor or the Rehabilitation Receiver to make arrangements to provide for the
3 insurance or maintenance of the property, or to make payments or otherwise
4 provide additional or replacement security such that the Claim is fully secured. If
5 such arrangements are not feasible, the Court may allow the Secured Creditor
6 lacking adequate protection to enforce its security, *Provided*, that the proceeds of
7 the sale will be distributed in accordance with the order prescribed under the rules of
8 concurrence and preference of credits.

9
10 **I. LIABILITY OF DIRECTORS AND OFFICERS**

11
12 **Section 40. Liability of Directors and Officers.** The directors and
13 officers of a Debtor shall be liable up to double the value of the property sold,
14 embezzled or disposed of or the amount of the transaction involved, whichever is
15 higher, to be recovered for the benefit of the Debtor and the Creditors if they,
16 having notice of the commencement of the proceedings or in contemplation of
17 the proceedings, willfully commit the following acts:

- 18 a. dispose or cause to be disposed of any property of the Debtor
19 *other than in the ordinary course of business* or authorize or
20 approve any transactions fraudulently or in a manner grossly
21 disadvantageous to the Debtor and/or Creditors; or
22 b. conceal, or authorize or approve the concealment, from the
23 Creditors, or embezzle or misappropriate, any property of the
24 Debtor.

25 In determining the extent of the liability of a director or an officer under
26 this section, the Court shall consider the amount of the shareholding or equity
27 interest of such director or officer, the degree of the involvement of such director

1 or officer in the acts complained of as well as the extent to which he benefited
2 from the transaction.

3

4 **J. THE REHABILITATION PLAN**

5

6 **Section 41. Contents of a Rehabilitation Plan.** The Rehabilitation
7 Plan shall, as a minimum:

- 8 a. Specify the underlying assumptions, the financial goals and the
9 procedures proposed to accomplish such goals;
- 10 b. Compare the amounts expected to be received by the creditors
11 under the Rehabilitation Plan with those that they will receive if
12 Liquidation ensues within the next one hundred twenty (120) days;
- 13 c. Contain information sufficient to give the various classes of
14 Creditors a reasonable basis for determining whether supporting
15 the Plan is in their financial interest when compared to the
16 immediate Liquidation of the Debtor;
- 17 d. Establish classes of voting Creditors;
- 18 e. Establish sub-classes of voting Creditors if prior approval has been
19 granted by the Court;
- 20 f. Indicate how the Plan will be implemented;
- 21 g. Specify the treatment of each class or sub-class described in sub-
22 sections (b) and (c);
- 23 h. Provide for equal treatment of all Claims within the same class or
24 sub-class, unless a particular Creditor voluntarily agrees to less
25 favorable treatment;

- 1 i. Maintain the security interest of Secured Creditors and preserve the
2 Liquidation value of the security unless such has been waived or
3 modified voluntarily;
- 4 j. Disclose all payments to Creditors for pre-commencement debts
5 made during the proceedings and the justifications thereof;
- 6 k. Describe the Disputed Claims and the provisioning of funds to
7 account for appropriate payments should the Claim be ruled valid
8 or its amount adjusted;
- 9 l. Identify the Debtor's Role in the implementation of the Plan;
- 10 m. State any Rehabilitation covenants of the Debtor, the breach of
11 which shall be considered a material breach of the Plan;
- 12 n. Identify those responsible for the future management of the Debtor
13 and the supervision and implementation of the Plan, their
14 affiliation with the Debtor, and their remuneration;
- 15 o. Address the treatment of Claims arising after the confirmation of
16 the Rehabilitation Plan; and
- 17 p. Provide for the resolution of any breach of the Rehabilitation Plan
18 by the Debtor.
- 19

20 **Section 42. Consultation with Debtor and Creditors.** If the Court
21 gives due course to the petition, the Rehabilitation Receiver shall confer with the
22 Debtor and all the classes of Creditors, and may consider their views and
23 proposals, in the review, revision, or preparation of a new Rehabilitation Plan.

24

25 **Section 43. Approval of Rehabilitation Plan.** The Rehabilitation
26 Receiver shall notify the Creditors and Shareholders that the Plan is ready for
27 their examination. Within twenty (20) days from said notification, the

1 Rehabilitation Receiver shall convene the Creditors, either as a whole or per
2 class, for purposes of voting on the approval of the Plan. The Plan shall be
3 deemed rejected unless approved by all classes of Creditors whose rights are
4 adversely modified or affected by the Plan. For purposes of this Section, the
5 Plan is deemed to have been approved by a class of Creditors if members of said
6 class holding more than fifty percent (50%) of the total Claims of said class vote
7 in favor of the Plan. The votes of the Creditors shall be based solely on the
8 amount of their respective Claims based on the registry of claims submitted by
9 the Rehabilitation Receiver pursuant to Section 27 hereof.

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

- 12 a. The Rehabilitation Receiver nevertheless proceeds to recommend
13 the confirmation of the Rehabilitation Plan;
- 14 b. The Shareholders or owners of the Debtor lose at least their
15 controlling interest as a result of the Rehabilitation Plan; and
- 16 c. The Rehabilitation Plan would likely provide the objecting class of
17 Creditors with compensation which has a net present value greater
18 than that which they would have received if under Liquidation.

19

20 **Section 44. Rejection of Rehabilitation Plan.** If the Rehabilitation
21 Plan is rejected, the Rehabilitation Receiver shall immediately report such fact to
22 the Court. Upon receipt of notice of rejection, the Court shall convert the
23 proceedings into one for the Liquidation of the Debtor.

24

25 **Section 45. Submission of Rehabilitation Plan to the Court.** If the
26 Rehabilitation Plan is approved, the Rehabilitation Receiver shall submit the same
27 to the Court for confirmation. Within five (5) days from receipt of the

1 Rehabilitation Plan, the Court shall notify the Creditors that the Rehabilitation
2 Plan has been submitted for confirmation, that any Creditor may obtain copies of
3 the Rehabilitation Plan, and that any Creditor may file an objection thereto.

4

5 **Section 46. Filing of Objections to Rehabilitation Plan.** A Creditor
6 may file an objection to the Rehabilitation Plan within twenty (20) days from
7 receipt of notice from the Court that the Rehabilitation Plan has been submitted
8 for confirmation. Objections to a Rehabilitation Plan shall be limited to the
9 following:

- 10 a. The documents or data relied upon in the Rehabilitation Plan are
11 materially false or misleading; or
12 b. The Rehabilitation Plan is in fact not supported by the voting
13 Creditors.

14

15 **Section 47. Hearing on the Objections.** If objections have been
16 submitted during the relevant period, the Court shall issue an order setting the
17 time and date for the hearing or hearings on the objections. If the Court finds
18 merit in the objection, it shall order the Rehabilitation Receiver or other party to
19 cure the defect, whenever feasible. If the Court determines that it is not feasible
20 to cure the defect, the Court shall convert the proceedings into one for the
21 Liquidation of the Debtor.

22

23 **Section 48. Confirmation of the Rehabilitation Plan.** If no
24 objections are filed within the relevant period or, if objections are filed, the Court
25 finds them lacking in merit, or determines that the basis for the objection has
26 been cured, the Court shall issue an order confirming the Rehabilitation Plan.
27 The Court may confirm the Rehabilitation Plan notwithstanding unresolved

1 disputes over Claims if the Rehabilitation Plan has made adequate provisions for
2 paying such Claims.

3

4 **Section 49. Period for Confirmation of the Rehabilitation Plan.**

5 The Court shall have a maximum period of eighteen (18) months from the date
6 of the filing of the petition to confirm a Rehabilitation Plan. If no Rehabilitation
7 Plan is confirmed within the said period, the proceedings shall be converted into
8 one for the Liquidation of the Debtor.

9

10 **Section 50. Effect of Confirmation of the Rehabilitation Plan.** The

11 confirmation of the Rehabilitation Plan by the Court shall result in the following:

- 12 a. The Rehabilitation Plan and its provisions shall be binding upon the
13 Debtor and all persons who may be affected by it, including the
14 Creditors, whether or not such persons have participated in the
15 proceedings or opposed the Rehabilitation Plan or whether or not
16 their Claims have been scheduled;
- 17 b. The Debtor shall comply with the provisions of the Rehabilitation
18 Plan and shall take all actions necessary to carry out the plan;
- 19 c. Payments shall be made to the Creditors in accordance with the
20 provisions of the Rehabilitation Plan;
- 21 d. Contracts and other arrangements between the Debtor and its
22 Creditors shall be interpreted as continuing to apply to the extent
23 that they do not conflict with the provisions of the Rehabilitation
24 Plan; and
- 25 e. Any compromises on amounts or rescheduling of timing of
26 payments by the Debtor shall be binding on creditors regardless of
27 whether or not the plan is successfully implemented.

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Section 51. Tax Exemption on Reduction of Liabilities of the Debtor. Any reduction in the Debtor’s liabilities arising or resulting from a Rehabilitation Plan’s approval shall not be subject to any tax.

Section 52. Accounting; Discharge of Rehabilitation Receiver. Upon the confirmation of the Rehabilitation Plan, the Rehabilitation Receiver shall provide a final report and accounting to the Court. Unless the Rehabilitation Plan specifically requires and describes the role of the Rehabilitation Receiver after the approval of the Rehabilitation Plan, the Court shall discharge the Rehabilitation Receiver of his duties.

Section 53. Effects of Breach or Failure of the Rehabilitation Plan. Upon a breach of, or upon a failure of the Rehabilitation Plan, the Court, upon motion by an affected party, may:

- a. Issue an order directing that the breach be cured within a specified period of time, failing which the proceedings may be converted to a Liquidation;
- b. Issue an order converting the proceedings to a Liquidation;
- c. Allow the Debtor or Rehabilitation Receiver to submit amendments to the Rehabilitation Plan, the approval of which shall be governed by the same requirements for the approval of a Rehabilitation Plan under this Sub-chapter;
- d. Issue any other order to remedy the breach consistent with the present regulation, other applicable law, and the best interests of the Creditors;or

- 1 e. Enforce the applicable provisions of the Rehabilitation Plan.

2
3 **CHAPTER III**

4 **PRE-NEGOTIATED REHABILITATION**

5
6 **Section 54. Petition by Debtor.** An Insolvent Debtor, by itself or jointly
7 with any of its Creditors, may file a verified petition with the Court for the
8 approval of a pre-negotiated Rehabilitation Plan which has been endorsed or
9 approved by Creditors holding at least two-thirds of the total obligations of the
10 Debtor, including Secured Creditors holding more than fifty percent (50%) of the
11 total Secured Claims of the Debtor and Unsecured Creditors holding more than
12 fifty percent (50%) of the total Unsecured Claims of the Debtor. The petition
13 shall include as a minimum:

- 14 a. a schedule of the Debtor's debts and liabilities,
15 b. an inventory of the Debtor's assets,
16 c. the pre-negotiated Rehabilitation Plan, including the names of at
17 least three (3) nominees for Rehabilitation Receiver, and
18 d. a summary of disputed Claims against the Debtor and a report on
19 the provisioning of funds to account for appropriate payments
20 should any such Claims be ruled valid or their amounts adjusted.

21
22 **Section 55. Issuance of Order.** Within five (5) working days, and after
23 determination that the petition is sufficient in form and substance, the Court shall
24 issue an Order which shall:

- 25 a. Identify the Debtor, its principal business or activity/ies, and its
26 principal place of business;
27 b. Declare that the Debtor is under Rehabilitation;

- 1 c. Summarize the ground/s for the filing of the petition;
- 2 d. Direct the publication of the Order in a newspaper of general
3 circulation once a week for at least two (2) consecutive weeks, with
4 the first publication to be made within seven (7) days from the time
5 of its issuance;
- 6 e. Direct the service by personal delivery of a copy of the petition on
7 each Creditor who is not a petitioner holding at least ten percent
8 (10%) of the total liabilities of the Debtor, as determined in the
9 schedule attached to the petition, within three (3) days;
- 10 f. State that copies of the petition and the Rehabilitation Plan are
11 available for examination and copying by any interested party;
- 12 g. State that Creditors and other interested parties opposing the
13 petition or Rehabilitation Plan may file their objections or comments
14 thereto within a period of not later than twenty days from the
15 second publication of the Order;
- 16 h. Appoint a Rehabilitation Receiver, if provided for in the Plan; and
- 17 i. Include a Suspension or Stay Order as described in Section 10(m)
18 above.

19

20 **Section 56. Approval of the Plan.** Within ten days from the date of the
21 second publication of the Order, the Court shall approve the Rehabilitation Plan
22 unless a Creditor or other interested party submits an objection to it in
23 accordance with the next succeeding Section.

24

25 **Section 57. Objection to the Petition or Rehabilitation Plan.** Any
26 Creditor or other interested party may submit to the Court an objection to the
27 petition or the Rehabilitation Plan not later than eight days from the date of the

1 second publication of the Order mentioned in Section 55. The objections shall be
2 limited to the following:

- 3 a. The allegations in the petition or the Rehabilitation Plan, or the
4 attachments thereto, are materially false or misleading;
- 5 b. The majority of any class of Creditors do not in fact support the
6 Rehabilitation Plan;
- 7 c. The Rehabilitation Plan fails to accurately account for a Claim
8 against the Debtor and the claim is not categorically declared as a
9 contested claim; or
- 10 d. The support of the Creditors, or any of them, was induced by
11 fraud.

12 Copies of any objection to the petition or the Rehabilitation Plan shall be
13 served on the Debtor, the Rehabilitation Receiver (if applicable), the Secured
14 Creditor with the largest Claim and who supports the Rehabilitation Plan, and the
15 Unsecured Creditor with the largest Claim and who supports the Rehabilitation
16 Plan.

17

18 **Section 58. Hearing on the Objections.** After receipt of an objection,
19 the Court shall set the same for hearing. The date of the hearing shall be no
20 earlier than twenty (20) and no later than thirty (30) days from the date of the
21 second publication of the Order mentioned in Section 55. If the Court finds merit
22 in the objection, it shall direct the Debtor, when feasible, to cure the defect
23 within a reasonable period. If the Court determines that the Debtor or Creditors
24 supporting the Rehabilitation Plan acted in bad faith, or that the objection is non-
25 curable, the Court may order the conversion of the proceedings into Liquidation.
26 A finding by the Court that the objection has no substantial merit, or that the
27 same has been cured, shall be deemed an approval of the Rehabilitation Plan.

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Section 59. Period for Approval of Rehabilitation Plan. The Court shall have a maximum period of sixty (60) days from the date of the filing of the petition to approve the Rehabilitation Plan. If the Court fails to act within said period, the Rehabilitation Plan shall be deemed approved.

Section 60. Effects of Approval of the Rehabilitation Plan. Approval of the Plan under this Chapter shall have the same legal effect as confirmation of a Rehabilitation Plan under Section 50.

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

Section 61. Out-of-Court or Informal Restructuring Agreements or Rehabilitation Plans - An out-of-Court or informal restructuring agreement or rehabilitation plan that meets the minimum requirements prescribed in this Chapter is hereby recognized as consistent with the objectives of this Act.

Section 62. Minimum Requirements of Out-of-Court or Informal Restructuring Agreements and Rehabilitation Plans. – For an out-of-court or informal restructuring/workout agreement or Rehabilitation Plan to qualify under this Chapter, it must meet the following minimum requirements:

- a. The Debtor must agree to the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan;
- b. It must be approved by Creditors representing at least sixty-seven (67%) of the secured obligations of the Debtor; and

- 1 c. It must be approved by Creditors representing at least seventy-five
2 percent (75%) of the unsecured obligations of the Debtor.
- 3 d. It must be approved by Creditors holding at least eighty percent
4 (80%) of the total obligations, secured and unsecured, of the
5 Debtor.

6

7 **Section 63. Standstill Period** – A standstill period that may be agreed
8 upon by the parties pending negotiation and finalization of the out-of-Court or
9 informal restructuring/workout agreement or Rehabilitation Plan contemplated
10 herein shall be effective and enforceable not only against the contracting parties
11 but also against the other Creditors, provided that it is approved by Creditors
12 representing at least seventy-five percent of the total obligations of the Debtor
13 and the standstill period does not exceed one hundred twenty (120) days from
14 the date of effectivity.

15

16 **Section 64. Cram Down Effect.** - A restructuring/workout agreement
17 or Rehabilitation Plan that is approved pursuant to a informal workout framework
18 referred to in this Chapter shall have the same legal effect as confirmation of a
19 Plan under Section 50 hereof.

20

21 **Section 65. Amendment or Modification.** – Any amendment of an
22 out-of-Court restructuring/workout agreement or Rehabilitation Plan must be
23 made in accordance with the terms of the agreement .

24

25 **Section 66. Effect of Court Action or Other Proceeding.** – Any
26 Court action or other proceedings arising from, or relating to, the out-of-court or
27 informal restructuring/workout agreement or Rehabilitation Plan shall not stay its

1 implementation, unless the relevant party is able to secure a temporary
2 restraining order or injunctive relief from the appropriate Court.

4 **CHAPTER V - LIQUIDATION IN INSOLVENCY**

6 **A. INITIATION OF PROCEEDINGS**

7 **Section 67. Voluntary Liquidation.** An Insolvent Debtor may apply for
8 Liquidation by filing a petition for Liquidation with the Court. The petition shall be
9 verified, shall establish the insolvency of the Debtor and shall contain, whether
10 as an attachment or as part of the body of the petition:

- 11 a. a schedule of the Debtor's debts and liabilities including a list of
12 creditors with their addresses, amounts of claims and collaterals, or
13 securities, if any;
- 14 b. an inventory of all its assets including receivables and claims
15 against third parties; and
- 16 c. the names of at least three nominees to the position of Liquidator.

17 At any time during the pendency of Court-supervised or pre-negotiated
18 Rehabilitation proceedings, the Debtor may also initiate Liquidation proceedings
19 by filing a motion in the same Court where the Rehabilitation proceedings are
20 pending to convert the Rehabilitation Proceedings into Liquidation Proceedings.
21 The motion shall be verified, shall contain or set forth the same matters required
22 in the preceding paragraph, and state that the Debtor is seeking immediate
23 dissolution and termination of its corporate existence.

24 If the petition or the motion, as the case may be, is sufficient in form and
25 substance, the Court shall issue a Liquidation Order mentioned in Section 71
26 hereof.

1 **Section 68. Involuntary Liquidation.** Three or more Creditors the
2 aggregate of whose Claims is at least either One Million Pesos (P1,000,000.00)
3 or at least Twenty Five Per Cent (25%) of the subscribed capital stock or
4 partner's contributions of the Debtor, whichever is higher, may apply for and
5 seek the Liquidation of an Insolvent Debtor by filing a Petition for Liquidation of
6 the Debtor with the Court. The Petition shall show that:

- 7 a. There is no genuine issue of fact or law on the Claim/s of the
8 petitioner/s, and that the due and demandable payments thereon
9 have not been made for at least one hundred eighty (180) days;
10 and
11 b. There is no substantial likelihood that the Debtor may be
12 rehabilitated.

13 At any time during the pendency of or after a rehabilitation Court-
14 supervised or pre-negotiated Rehabilitation proceedings, three or more Creditors
15 **whose Claims is at least either One Million Pesos (P1,000,000.00) or at**
16 **least Twenty Five Per Cent (25%) of the subscribed capital or**
17 **partner's contributions of the Debtor, whichever is higher,** may also
18 initiate Liquidation proceedings by filing a motion in the same Court where the
19 Rehabilitation proceedings are pending to convert the Rehabilitation Proceedings
20 into Liquidation Proceedings. The motion shall be verified, shall contain or set
21 forth the same matters required in the preceding paragraph, and state that the
22 movants are seeking the immediate Liquidation of the Debtor.

23 If the petition or motion is sufficient in form and substance, the Court
24 shall issue an order:

- 25 a. Directing the publication of the petition or motion in a newspaper
26 of general circulation once a week for two consecutive weeks;

1 b. Directing the Debtor and all Creditors who are not the petitioners to
2 file their comment on the petition or motion within fifteen (15) days
3 from the date of last publication.

4 If, after considering the comments filed, the Court determines that the
5 petition or motion is meritorious, it shall issue the Liquidation Order mentioned in
6 Section 71 hereof.

7
8 **Section 69. Conversion by the Court into Liquidation**

9 **Proceedings.** During the pendency of Court-supervised or pre-negotiated
10 Rehabilitation proceedings, the Court may order the conversion of Rehabilitation
11 proceedings to Liquidation proceedings pursuant to (i) Section 15(c) of this Act,
12 or (ii) Section 44 of this Act, or (iii) Section 47 of this Act, or (iv) Section 49 of
13 this Act, or (v) Section 53(a) of this Act, or (vi) Section 58 of this Act, or at any
14 other time upon the recommendation of the Rehabilitation Receiver that the
15 rehabilitation of the Debtor is not feasible. Thereupon, the Court shall issue the
16 Liquidation Order mentioned in Section 71 hereof.

17
18 **Section 70. Powers of the Securities and Exchange Commission.**

19 The provisions of this Chapter shall not affect the regulatory powers of the
20 Securities and Exchange Commission under Section 6 of Presidential Decree No.
21 902-A, as amended, with respect to any dissolution and Liquidation proceeding
22 initiated and heard before it.

23
24 **B. THE LIQUIDATION ORDER**

25
26 **Section 71. Liquidation Order.** The Liquidation Order shall:

27 a. *Declare the Debtor Insolvent;*

- 1 b. Order the Dissolution and Liquidation of the Debtor;
- 2 c. Order the Sheriff to take possession and control of all the property
- 3 of the Debtor;
- 4 d. Order the publication of the petition or motion in a newspaper of
- 5 general circulation once a week for two consecutive weeks;
- 6 e. Direct payments of any Claims and conveyance of any property due
- 7 the Debtor to the Liquidator;
- 8 f. Prohibit payments by the Debtor and the transfer of any property
- 9 by the Debtor;
- 10 g. Direct all Creditors to file their Claims with the Liquidator within the
- 11 period set by the rules of procedure;
- 12 h. Authorize the payment of Administrative Expenses as they become
- 13 due;
- 14 i. State that the Debtor and Creditors who are not petitioner/s may
- 15 submit the names of other nominees to the position of Liquidator;
- 16 and
- 17 j. Set the case for hearing for the election and appointment of the
- 18 Liquidator, which date shall not be less than thirty (30) days nor
- 19 more than forty-five (45) days from the date of the last publication;

21 **Section 72. Effects of the Liquidation Order.** Upon the issuance of
22 *the Liquidation Order*

- 23 a. The Debtor shall be deemed dissolved and its corporate existence
- 24 terminated;
- 25 b. Legal title to and control of all the assets of the Debtor shall be
- 26 deemed vested in the Liquidator or, pending his election or
- 27 appointment, with the Court;

- 1 c. All contracts of the Debtor shall be deemed terminated and/or
2 breached, unless the Liquidator, within ninety (90) days from the
3 date of his assumption of office, declares otherwise and the
4 contracting party agrees;
- 5 d. No separate action for the collection of an Unsecured Claim shall be
6 allowed. Such actions already pending will be transferred to the
7 Liquidator for him to accept and settle or contest. If the Liquidator
8 contests or disputes the Claim, the Court, except when the case is
9 already on appeal. In such a case, the suit may proceed to
10 judgment, and any final and executory judgment therein for a
11 Claim against the Debtor shall be filed and allowed in Court.
- 12 e. No foreclosure proceeding shall be allowed for a period of one
13 hundred eighty (180) days.
14

15 **Section 73. Rights of Secured Creditors.** The Liquidation Order shall
16 not affect the right of a Secured Creditor to enforce his Lien in accordance with
17 the applicable contract or law. A Secured Creditor may:

- 18 a. Waive his rights under the security or Lien, prove his Claim in the
19 Liquidation proceedings, and share in the distribution of the assets
20 of the Debtor; or
- 21 b. Maintain his rights under his security or Lien.
- 22 If the Secured Creditor maintains his rights under the security or
23 Lien:
- 24 a. The value of the property may be fixed in a manner agreed upon
25 by the Creditor and the Liquidator. When the value of the property
26 is less than the Claim it secures, the Liquidator may convey the
27 property to the Secured Creditor and the latter will be admitted in

1 the Liquidation proceedings as a Creditor for the balance; if its
2 value exceeds the Claim secured, the Liquidator may convey the
3 property to the Creditor and waive the Debtor's right of redemption
4 upon receiving the excess from the Creditor; or

5 b. The Liquidator may sell the property and satisfy the Secured
6 Creditor's entire Claim from the proceeds of the sale; or

7 c. The Secured Creditor may enforce the Lien or foreclose on the
8 property pursuant to applicable laws.

9
10 **C. THE LIQUIDATOR**

11
12 **Section 74. Election of Liquidator.** *Only Creditors who have filed their*
13 *Claims within the period set by the Court, and whose Claims are not barred by*
14 *the statute of limitations, will be allowed to vote in the election of the Liquidator.*
15 *A Secured Creditor will not be allowed to vote, unless (a) he waives his security*
16 *or Lien, or (b) has the value of the property subject of his security or Lien fixed*
17 *by agreement with the Liquidator, and is admitted for the balance of his Claim.*

18 The Creditors entitled to vote will elect the Liquidator in open Court. The
19 nominee receiving the highest number of votes cast in terms of amount of
20 Claims, and who is qualified pursuant to Section 71 hereof, shall be appointed as
21 the Liquidator.

22
23 **Section 75. Court-appointed Liquidator.** The Court may appoint the
24 Liquidator if

25 a. on the date set for the election of the Liquidator, the Creditors do
26 not attend;

27 b. the Creditors who attend fail or refuse to elect a Liquidator,

- 1 c. after being elected, the Liquidator fails to qualify, or
2 d. a vacancy occurs for any reason whatsoever. In any of the cases
3 provided herein, the Court may instead set another hearing for the
4 election of the Liquidator.

5

6 **Section 76. Oath and bond of the Liquidator.** Prior to entering upon
7 his powers, duties and responsibilities, the Liquidator shall take an oath and file a
8 bond, in such amount to be fixed by the Court, conditioned upon the proper and
9 faithful discharge of his powers, duties and responsibilities.

10

11 **Section 77. Qualifications of the Liquidator.** The Liquidator shall
12 have the qualifications enumerated in Section 18 hereof. He may be removed at
13 any time by the Court for cause, either *motu proprio* or upon motion of any
14 Creditor entitled to vote for the election of the Liquidator.

15

16 **Section 78. Powers, Duties, and Responsibilities of the**
17 **Liquidator.** The Liquidator shall be deemed an officer of the Court with the
18 principal duty of preserving and maximizing the value and recovering the assets
19 of the Debtor, with the end of liquidating them and discharging to the extent
20 possible all the Claims against the Debtor. The powers, duties and responsibilities
21 of the Liquidator shall include, but not be limited to:

- 22 a. To sue and recover all **the** assets, debts, and Claims, belonging or
23 due to the Debtor;
24 b. To take possession of all the property of the Debtor except
25 property exempt by law from execution;
26 c. To sell, with the approval of the Court, any property of the Debtor
27 which has come into his possession or control;

- 1 d. To redeem all mortgages and pledges, and to satisfy any judgment
2 which may be an encumbrance on any property sold by him;
- 3 e. To settle all accounts between the Debtor and his Creditors, subject
4 to the approval of the Court;
- 5 f. To recover any property, or its value, fraudulently conveyed by the
6 Debtor;
- 7 g. To recommend to the Court the creation of a Creditor's committee
8 which will assist him in the discharge of his functions and which
9 shall have powers as the Court deems just, reasonable and
10 necessary; and
- 11 h. Upon approval of the Court, to engage such professionals as may
12 be necessary and reasonable to assist him in the discharge of his
13 duties.

14

15 **Section 79. Compensation of the Liquidator.** The Liquidator and the
16 persons and entities engaged or employed by him to assist in the discharge of
17 his powers and duties shall be entitled to such reasonable compensation as may
18 be determined by the Liquidation Court, which shall not exceed the maximum
19 amount as may be prescribed by the Supreme Court.

20

21 **Section 80. Reporting Requirements.** The Liquidator shall make and
22 keep a record of all money received and all disbursements made by him or under
23 his authority as Liquidator. He shall render a quarterly report thereof to the
24 Court, which report shall be made available to all interested parties. The
25 Liquidator shall also submit such reports as may be required by the Court from
26 time to time as well a final report at the end of the Liquidation proceedings.

27

1 **Section 81. Discharge of Liquidator.** In preparation for the final
2 settlement of all the Claims against the Debtor, the Liquidator will notify all the
3 Creditors, either by publication in a newspaper of general circulation or such
4 other mode as the Court may direct or allow, that he will apply with the Court for
5 the settlement of his account and his discharge from liability as Liquidator. The
6 Liquidator will file a final accounting with the Court, with proof of notice to all
7 Creditors. *The accounting will be set for hearing. If the Court finds the same in*
8 *order, the Court will discharge the Liquidator.*

9
10 **D. DETERMINATION OF CLAIMS**

11
12 **Section 82. Registry of Claims.** Within twenty (20) days from his
13 assumption into office, the Liquidator shall prepare a preliminary registry of
14 Claims of Secured and Unsecured Creditors. Secured Creditors who have waived
15 their security or Lien, or have fixed the value of the property subject of their
16 security or Lien by agreement with the Liquidator and is admitted as a Creditor
17 for the balance, shall be considered as Unsecured Creditors. The Rehabilitation
18 Receiver shall make the registry available for public inspection and provide
19 publication notice to Creditors and Shareholders on where and when they may
20 inspect it. All Claims must be duly proven before being paid.

21
22 **Section 83. Right of Set-off.** If the Debtor and a Creditor are mutually
23 Debtor and Creditor of each other, one debt shall be set off against the other,
24 and only the balance, if any, shall be allowed in the Liquidation proceedings.

25
26 **Section 84. Opposition or Challenge to Claims.** Within thirty (30)
27 days from the expiration of the period for filing of applications for recognition of

1 Claims, Creditors, Shareholders and other interested parties may submit a
2 challenge to a Claim or Claims to the Court, serving a certified copy on the
3 Liquidator and the Creditor holding the challenged Claim. Upon the expiration of
4 the thirty (30) day period, the Rehabilitation Receiver shall submit to the Court
5 the registry of Claims containing the undisputed Claims that have not been
6 subject to challenge. Such Claims shall become final upon the filing of the
7 register and may be subsequently set aside only on grounds of fraud, accident,
8 mistake, or excusable neglect.

9

10 **Section 85. Submission of Disputed Claims to Court.** The Liquidator
11 shall resolve disputed Claims, and submit his findings thereon to the Court for
12 final approval. The Liquidator may disallow Claims.

13

14 **E. AVOIDANCE PROCEEDINGS**

15 **Section 86. Rescission or Nullity of Certain Transactions.** Any
16 transaction occurring prior to the issuance of the Liquidation Order or, in case of
17 the conversion of the Rehabilitation proceedings to Liquidation proceedings, prior
18 to the Commencement Date, entered into by the Debtor or involving its assets
19 *may be rescinded or declared null and void on the ground that the same was*
20 *executed with intent to defraud a Creditor or Creditors or which constitute undue*
21 *preference of Creditors. The presumptions set forth in Section 35 shall apply.*

22

23 **Section 87. Actions for Rescission or Nullity.** The Liquidator or, with
24 his conformity, a Creditor, may initiate and prosecute any action to rescind, or
25 declare null and void any transaction described in the immediately preceding
26 paragraph. If the Liquidator does not consent to the filing or prosecution of such
27 action, any Creditor may seek leave of the Court to commence said action.

1

2 **F. THE LIQUIDATION PLAN**

3

4 **Section 88. The Liquidation Plan.** Within three (3) months from his
5 assumption into office, the Liquidator shall submit a Liquidation Plan to the
6 Court. The Liquidation Plan shall, as a minimum, enumerate all the assets of the
7 Debtor, all the Claims against the Debtor, and a schedule of Liquidation of the
8 assets and payment of the Claims.

9

10 **Section 89. Sale of Assets in Liquidation.** The Liquidator may sell
11 the unencumbered assets of the Debtor and convert the same into money. The
12 sale shall be made at public auction. However, a private sale may be allowed
13 with the approval of the Court if: (a) the goods to be sold are of a perishable
14 nature, or are liable to quickly deteriorate in value, or are disproportionately
15 expensive to keep or maintain, or (b) the private sale is for the best interest of
16 the Debtor and his Creditors.

17 *With the approval of the Court, unencumbered property of the Debtor*
18 *may also be conveyed to a Creditor in satisfaction of his Claim, or part thereof.*

19

20 **Section 90. Manner of Implementing the Liquidation Plan.** The
21 Liquidator shall implement the Liquidation Plan as approved by the Court.
22 Payments shall be made to the Creditors only in accordance with the provisions
23 of the Plan.

24

25 **Section 91. Concurrence and Preference of Credits.** The Liquidation
26 Plan and its implementation shall ensure that the concurrence and preference of
27 credits as enumerated in the Civil Code of the Philippines shall be observed,

1 unless a preferred Creditor voluntarily waives his preferred right. For purposes of
2 this Chapter, credits for services rendered by employees or laborers to the
3 Debtor shall enjoy first preference under Article 2244 of the Civil Code, unless
4 the Claims constitute legal liens under Articles 2241 and 2242 thereof.

5
6 **G. LIQUIDATION OF A SECURITIES MARKET PARTICIPANT**

7
8 **Section 92. Liquidation of a Securities Market Participant.** The
9 foregoing provisions of this Chapter shall be without prejudice to the power of a
10 regulatory agency or self-regulatory organization to liquidate trade-related claims
11 of clients or customers of a Securities Market Participant which, for purposes of
12 investor protection, are hereby deemed to have absolute priority over all other
13 Claims of whatever nature or kind insofar as trade-related assets are concerned.
14 For purposes of this Section, "trade-related assets" include cash, securities,
15 trading right and other assets owned and used by the Securities Market
16 Participant in the ordinary course of its business.

17
18 **CHAPTER VI**

19 **FOREIGN CORPORATIONS WITH ASSETS IN THE PHILIPPINES**

20
21 **Section 93. Petition by Foreign Entity.** The Court shall set a hearing
22 in connection with an insolvency or rehabilitation proceeding taking place in a
23 foreign jurisdiction, upon the submission of a petition by the representative of
24 the foreign entity that is the subject of the foreign proceeding.

25
26 **Section 94. Action by the Court.** The Court may issue orders:

- 1 a. suspending any actions to enforce Claims against the entity or
2 otherwise seize or foreclose on property of the foreign entity
3 located in the Philippines;
4 b. requiring the surrender of property of the foreign entity to the
5 foreign representative; or
6 c. providing other necessary relief.

7
8 **Section 95. Factors in Granting Relief.** In determining whether to
9 grant relief under this Sub-chapter, the Court shall consider:

- 10 a. the protection of Creditors in the Philippines and the inconvenience
11 in pursuing their Claims in a foreign proceeding;
12 b. the just treatment of all Creditors through resort to a unified
13 insolvency or rehabilitation proceeding;
14 c. whether other jurisdictions have given recognition to the foreign
15 proceeding;
16 d. the extent that the foreign proceeding recognizes the rights of
17 Creditors and other interested parties in a manner substantially in
18 accordance with the manner prescribed in this Act; and
19 e. the extent that the foreign proceeding has recognized and shown
20 deference to proceedings under this Act and previous legislation.

21
22 **CHAPTER VII**

23 **PROVISION COMMON TO**

24 **CHAPTERS II, III, IV, V and VI**

25 **Section 96. Authorization to Exchange Debt for Equity.**

26 Notwithstanding applicable banking legislation to the contrary, any bank,
27 whether universal or not, may acquire and hold an equity interest or investment

1 in a Debtor or its subsidiaries when conveyed to such bank in satisfaction of
2 debts pursuant to a Rehabilitation or Liquidation Plan approved by the Court:
3 Provided, That such ownership shall be subject to the ownership limits applicable
4 to universal banks for equity investments and: Provided further, That any equity
5 investment or interest acquired or held pursuant to this Section shall be disposed
6 by the bank within a period of five (5) years or as may be prescribed by the
7 Monetary Board.

8 **MISCELLANEOUS PROVISIONS**

9 **Section 97. Separability Provision** – If any provision of this Act shall
10 be held invalid, the remainder of this Act not otherwise affected shall remain in
11 full force and effect.

12

13 **Section 98. Repealing Clause.** All provisions of existing laws, insofar
14 as they are inconsistent with this Act, are hereby repealed and/or amended.

15 These include particularly Section 110 of Presidential Decree No. 442, as
16 amended, the provisions of Concurrence and Preference of Credits under the
17 Civil Code of the Philippines, Presidential Decree No. 902-A, as amended, and Act
18 No. 1956, as amended.

19

20 **Section 99. Effective Date** – This Act shall take effect fifteen (15) days
21 after its complete publication in the Official Gazette or in at least two (2) national
22 newspapers of general circulation.

23

24 **Section 100. Application to Pending Insolvency, Suspension**
25 **of Payments and Rehabilitation Cases** -- This Act shall govern all petitions
26 filed after it takes effect, and also all further proceedings in insolvency,
27 suspension of payments and rehabilitation cases then pending, except to the

1 extent that in the opinion of the Court their application would not be feasible or
2 would work injustice, in which event the procedures set forth in prior laws and
3 regulations shall apply.

4 *Approved,*

5