



July 18, 2010 ^{*(2)}

REPUBLIC ACT NO. 10142 

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

CHAPTER I

General Provisions

SECTION 1. *Title.* — This Act shall be known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010".

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

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

The proceedings shall be conducted in a summary and non-adversarial manner

consistent with the declared policies of this Act and in accordance with the rules of procedure that the Supreme Court may promulgate.

SECTION 4. *Definition of Terms.* — As used in this Act, the term:

- (a) *Administrative expenses* shall refer to those reasonable and necessary expenses:
 - (1) incurred or arising from the filing of a petition under the provisions of this Act;
 - (2) arising from, or in connection with, the conduct of the proceedings under this Act, including those incurred for the rehabilitation or liquidation of the debtor;
 - (3) incurred in the ordinary course of business of the debtor after the commencement date;
 - (4) for the payment of new obligations obtained after the commencement date to finance the rehabilitation of the debtor;
 - (5) incurred for the fees of the rehabilitation receiver or liquidator and of the professionals engaged by them; and
 - (6) that are otherwise authorized or mandated under this Act or such other expenses as may be allowed by the Supreme Court in its rules.
- (b) *Affiliate* shall refer to a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation.
- (c) *Claim* shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided*, That, this inclusion does not prohibit the creditors or third parties from filing cases against

the directors and officers acting in their personal capacities.

- (d) *Commencement date* shall refer to the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings.
- (e) *Commencement Order* shall refer to the order issued by the court under Section 16 of this Act.
- (f) *Control* shall refer to the power of a parent corporation to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries or affiliates, more than one-half (1/2) of the voting power of an enterprise unless, in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half (1/2) or less of the voting power of an enterprise when there is power:
 - (1) over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;
 - (2) to direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
 - (3) to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - (4) to cast the majority votes at meetings of the board of directors or equivalent governing body.
- (g) *Court* shall refer to the court designated by the Supreme Court to hear and determine, at the first instance, the cases brought under this Act.
- (h) *Creditor* shall refer to a natural or juridical person which has a claim against the debtor that arose on or before the commencement date.
- (i) *Date of liquidation* shall refer to the date on which the court issues the Liquidation Order.
- (j) *Days* shall refer to calendar days unless otherwise specifically stated in

this Act.

- (k) *Debtor* shall refer to, unless specifically excluded by a provision of this Act, a sole proprietorship duly registered with the Department of Trade and Industry (DTI), a partnership duly registered with the Securities and Exchange Commission (SEC), a corporation duly organized and existing under Philippine laws, or an individual debtor who has become insolvent as defined herein.
- (l) *Encumbered property* shall refer to real or personal property of the debtor upon which a lien attaches.
- (m) *General unsecured creditor* shall refer to a creditor whose claim or a portion thereof is neither secured, preferred nor subordinated under this Act.
- (n) *Group of debtors* shall refer to and can cover only: (1) corporations that are financially related to one another as parent corporations, subsidiaries or affiliates; (2) partnerships that are owned more than fifty percent (50%) by the same person; and (3) single proprietorships that are owned by the same person. When the petition covers a group of debtors, all reference under these rules to debtor shall include and apply to the group of debtors.
- (o) *Individual debtor* shall refer to a natural person who is a resident and citizen of the Philippines that has become insolvent as defined herein.
- (p) *Insolvent* shall refer to the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.
- (q) *Insolvent debtor's estate* shall refer to the estate of the insolvent debtor, which includes all the property and assets of the debtor as of commencement date, plus the property and assets acquired by the rehabilitation receiver or liquidator after that date, as well as all other property and assets in which the debtor has an ownership interest, whether or not these property and assets are in the debtor's possession as of commencement date: *Provided*, That trust assets and bailment, and other property and assets of a third party that are in the possession of

the debtor as of commencement date, are excluded therefrom.

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

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- (bb) *Party to the proceedings* shall refer to the debtor, a creditor, the unsecured creditors' committee, a stakeholder, a party with an ownership interest in property held by the debtor, a secured creditor, the rehabilitation receiver, liquidator or any other juridical or natural person who stands to be benefited or injured by the outcome of the proceedings and whose notice of appearance is accepted by the court.
- (cc) *Possessory lien* shall refer to a lien on property, the possession of which has been transferred to a creditor or a representative or agent thereof.
- (dd) *Proceedings* shall refer to judicial proceedings commenced by the court's acceptance of a petition filed under this Act.
- (ee) *Property of others* shall refer to property held by the debtor in which other persons have an ownership interest.
- (ff) *Publication notice* shall refer to notice through publication in a newspaper of general circulation in the Philippines on a business day for two (2) consecutive weeks.
- (gg) *Rehabilitation* shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.
- (hh) *Rehabilitation receiver* shall refer to the person or persons, natural or juridical, appointed as such by the court pursuant to this Act and which shall be entrusted with such powers and duties as set forth herein.
- (ii) *Rehabilitation Plan* shall refer to a plan by which the financial well-being and viability of an insolvent debtor can be restored using various means including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of new business entity as prescribed in Section 62 hereof, or other similar arrangements as may be approved by the court or creditors.
- (jj) *Secured claim* shall refer to a claim that is secured by a lien.

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- (kk) *Secured creditor* shall refer to a creditor with a secured claim.
 - (ll) *Secured party* shall refer to a secured creditor or the agent or representative of such secured creditor.
 - (mm) *Securities market participant* shall refer to a broker, dealer, underwriter, transfer agent or other juridical persons transacting securities in the capital market.
 - (nn) *Stakeholder* shall refer, in addition to a holder of shares of a corporation, to a member of a nonstock corporation or association or a partner in a partnership.
 - (oo) *Subsidiary* shall refer to a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly through one or more intermediaries by another corporation, which thereby becomes its parent corporation.
 - (pp) *Unsecured claim* shall refer to a claim that is not secured by a lien.
 - (qq) *Unsecured creditor* shall refer to a creditor with an unsecured claim.
 - (rr) *Voluntary proceedings* shall refer to proceedings initiated by the debtor.
 - (ss) *Voting creditor* shall refer to a creditor that is a member of a class of creditors, the consent of which is necessary for the approval of a Rehabilitation Plan under this Act.

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

For purposes of this section:

- (a) *Bank* shall refer to any duly licensed bank or quasi-bank that is potentially or actually subject to conservatorship, receivership or liquidation proceedings under the New Central Bank Act (Republic Act No. 7653) or successor legislation;
- (b) *Insurance company* shall refer to those companies that are potentially or actually subject to insolvency proceedings under the Insurance Code

(Presidential Decree No. 1460) or successor legislation; and

- (c) *Pre-need company* shall refer to any corporation authorized/licensed to sell or offer to sell pre-need plans.

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

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

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

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

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

SECTION 8. *Decisions of Creditors.* — Decisions of creditors shall be

made according to the relevant provisions of the Corporation Code in the case of stock or nonstock corporations or the Civil Code in the case of partnerships that are not inconsistent with this Act.

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

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

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

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

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

acquired or held pursuant to this section shall be disposed by the bank within a period of five (5) years or as may be prescribed by the Monetary Board.

CHAPTER II

Court-Supervised Rehabilitation

(A) Initiation Proceedings.

(1) Voluntary Proceedings.

SECTION 12. *Petition to Initiate Voluntary Proceedings by Debtor.* — When approved by the owner in case of a sole proprietorship, or by a majority of the partners in case of a partnership, or, in case of a corporation, by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of nonstock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose, an insolvent debtor may initiate voluntary proceedings under this Act by filing a petition for rehabilitation with the court and on the grounds hereinafter specifically provided. The petition shall be verified to establish the insolvency of the debtor and the viability of its rehabilitation, and include, whether as an attachment or as part of the body of the petition, as a minimum, the following:

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

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- (h) A Rehabilitation Plan;
 - (i) The names of at least three (3) nominees to the position of rehabilitation receiver; and
 - (j) Other documents required to be filed with the petition pursuant to this Act and the rules of procedure as may be promulgated by the Supreme Court.

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

(2) Involuntary Proceedings.

SECTION 13. *Circumstances Necessary to Initiate Involuntary Proceedings.* — Any creditor or group of creditors with a claim of, or the aggregate of whose claims is, at least One million pesos (Php1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital stock or partners' contributions, whichever is higher, may initiate involuntary proceedings against the debtor by filing a petition for rehabilitation with the court if:

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

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

- (a) identification of the debtor, its principal activities and its address;
- (b) the circumstances sufficient to support a petition to initiate involuntary

rehabilitation proceedings under Section 13 of this Act;

- (c) the specific relief sought under this Act;
- (d) a Rehabilitation Plan;
- (e) the names of at least three (3) nominees to the position of rehabilitation receiver;
- (f) other information that may be required under this Act depending on the form of relief requested; and
- (g) other documents required to be filed with the petition pursuant to this Act and the rules of procedure as may be promulgated by the Supreme Court.

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

SECTION 15. *Action on the Petition.* — If the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, within five (5) working days from the filing of the petition, issue a Commencement Order. If, within the same period, the court finds the petition deficient in form or substance, the court may, in its discretion, give the petitioner/s a reasonable period of time within which to amend or supplement the petition, or to submit such documents as may be necessary or proper to put the petition in proper order. In such case, the five (5) working days provided above for the issuance of the Commencement Order shall be reckoned from the date of the filing of the amended or supplemental petition or the submission of such documents.

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

- (a) identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) summarize the ground/s for initiating the proceedings;
- (c) state the relief sought under this Act and any requirement or procedure particular to the relief sought;
- (d) state the legal effects of the Commencement Order, including those

mentioned in Section 17 hereof;

- (e) declare that the debtor is under rehabilitation;
- (f) direct the publication of the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of its issuance;
- (g) if the petitioner is the debtor, direct the service by personal delivery of a copy of the petition on each creditor holding at least ten percent (10%) of the total liabilities of the debtor as determined from the schedule attached to the petition within five (5) days; if the petitioner/s is/are creditor/s, direct the service by personal delivery of a copy of the petition on the debtor within five (5) days;
- (h) appoint a rehabilitation receiver who may or may not be from among the nominees of the petitioner/s, and who shall exercise such powers and duties defined in this Act as well as the procedural rules that the Supreme Court will promulgate;
- (i) summarize the requirements and deadlines for creditors to establish their claims against the debtor and direct all creditors to file their claims with the court at least five (5) days before the initial hearing;
- (j) direct the Bureau of Internal Revenue (BIR) to file and serve on the debtor its comment on or opposition to the petition or its claim/s against the debtor under such procedures as the Supreme Court may hereafter provide;
- (k) prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after the issuance of the Commencement Order;
- (l) authorize the payment of administrative expenses as they become due;
- (m) set the case for initial hearing, which shall not be more than forty (40) days from the date of filing of the petition for the purpose of determining whether there is substantial likelihood for the debtor to be rehabilitated;

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- (n) make available copies of the petition and rehabilitation plan for examination and copying by any interested party;
 - (o) indicate the location or locations at which documents regarding the debtor and the proceedings under this Act may be reviewed and copied;
 - (p) state that any creditor or debtor, who is not the petitioner, may submit the name or nominate any other qualified person to the position of rehabilitation receiver at least five (5) days before the initial hearing;
 - (q) include a Stay or Suspension Order which shall:
 - (1) suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
 - (2) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - (3) prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - (4) prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

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

- (a) vest the rehabilitation receiver with all the powers and functions provided for in this Act, such as the right to review and obtain all records to which the debtor's management and directors have access, including bank accounts of whatever nature of the debtor, subject to the approval by the court of the performance bond filed by the rehabilitation receiver;
- (b) prohibit, or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise

allowed in this Act, subject to the provisions of Section 50 hereof;

- (c) serve as the legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors;
- (d) serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date; and
- (e) consolidate the resolution of all legal proceedings by and against the debtor to the court: *Provided, however,* That the court may allow the continuation of cases in other courts where the debtor had initiated the suit.

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

SECTION 18. *Exceptions to the Stay or Suspension Order.* — The Stay or Suspension Order shall not apply:

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

entrusted to the latter in the ordinary course of the latter's business as well as any action of such securities market participant or the appropriate regulatory agency or self-regulatory organization to pay or settle such claims or liabilities;

- (e) to the actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement for the settlement of securities transactions in accordance with the provisions of the Securities Regulation Code and its implementing rules and regulations;
- (f) the clearing and settlement of financial transactions through the facilities of a clearing agency or similar entities duly authorized, registered and/or recognized by the appropriate regulatory agency like the Bangko Sentral ng Pilipinas (BSP) and the SEC as well as any form of actions of such agencies or entities to reimburse themselves for any transactions settled for the debtor; and
- (g) any criminal action against the individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act.

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

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

SECTION 21. *Effectivity and Duration of Commencement Order.* — Unless lifted by the court, the Commencement Order shall be effective for the duration of the rehabilitation proceedings for as long as there is a substantial likelihood that the debtor will be successfully rehabilitated. In determining whether there is substantial likelihood for the debtor to be successfully rehabilitated, the court

shall ensure that the following minimum requirements are met:

- (a) The proposed Rehabilitation Plan submitted complies with the minimum contents prescribed by this Act;
- (b) There is sufficient monitoring by the rehabilitation receiver of the debtor's business for the protection of creditors;
- (c) The debtor has met with its creditors to the extent reasonably possible in attempts to reach a consensus on the proposed Rehabilitation Plan;
- (d) The rehabilitation receiver submits a report, based on preliminary evaluation, stating that the underlying assumptions and the financial goals stated in the petitioner's Rehabilitation Plan are realistic, feasible and reasonable; or, if not, there is, in any case, a substantial likelihood for the debtor to be successfully rehabilitated because, among others:
 - (1) there are sufficient assets with which to rehabilitate the debtor;
 - (2) there is sufficient cash flow to maintain the operations of the debtor;
 - (3) the debtor's owner/s, partners, stockholders, directors and officers have been acting in good faith and with due diligence;
 - (4) the petition is not a sham filing intended only to delay the enforcement of the rights of the creditor/s or of any group of creditors; and
 - (5) the debtor would likely be able to pursue a viable Rehabilitation Plan;
- (e) The petition, the Rehabilitation Plan and the attachments thereto do not contain any materially false or misleading statement;
- (f) If the petitioner is the debtor, that the debtor has met with its creditor/s representing at least three-fourths (3/4) of its total obligations to the extent reasonably possible and made a good faith effort to reach a consensus on the proposed Rehabilitation Plan; if the petitioner/s is/are a creditor or group of creditors, that the petitioner/s has/have met with the debtor and made a good faith effort to reach a consensus on the

proposed Rehabilitation Plan; and

- (g) The debtor has not committed acts of misrepresentation or in fraud of its creditor/s or a group of creditors.

SECTION 22. *Action at the Initial Hearing.* — At the initial hearing, the court shall:

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

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

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

- (a) the debtor is insolvent and if so, the causes thereof and any unlawful or irregular act or acts committed by the owner/s of a sole proprietorship, partners of a partnership, or directors or officers of a corporation in contemplation of the insolvency of the debtor or which may have contributed to the insolvency of the debtor;
- (b) the underlying assumptions, the financial goals and the procedures to

accomplish such goals as stated in the petitioner's Rehabilitation Plan are realistic, feasible and reasonable;

- (c) there is a substantial likelihood for the debtor to be successfully rehabilitated;
- (d) the petition should be dismissed; and
- (e) the debtor should be dissolved and/or liquidated.

SECTION 25. *Giving Due Course to or Dismissal of Petition, or Conversion of Proceedings.* — Within ten (10) days from receipt of the report of the rehabilitation receiver mentioned in Section 24 hereof, the court may:

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

promulgated by the Supreme Court.

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

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

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

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

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

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

- (a) A citizen of the Philippines or a resident of the Philippines in the six (6) months immediately preceding his nomination;
- (b) Of good moral character and with acknowledged integrity, impartiality and independence;
- (c) Has the requisite knowledge of insolvency and other relevant commercial laws, rules and procedures, as well as the relevant training and/or experience that may be necessary to enable him to properly

discharge the duties and obligations of a rehabilitation receiver; and

- (d) Has no conflict of interest: *Provided*, That such conflict of interest may be waived, expressly or impliedly, by a party who may be prejudiced thereby.

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

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

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

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

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

- (a) To verify the accuracy of the factual allegations in the petition and its annexes;
- (b) To verify and correct, if necessary, the inventory of all of the assets of the debtor, and their valuation;
- (c) To verify and correct, if necessary, the schedule of debts and liabilities

of the debtor;

- (d) To evaluate the validity, genuineness and true amount of all the claims against the debtor;
- (e) To take possession, custody and control, and to preserve the value of all the property of the debtor;
- (f) To sue and recover, with the approval of the court, all amounts owed to, and all properties pertaining to the debtor;
- (g) To have access to all information necessary, proper or relevant to the operations and business of the debtor and for its rehabilitation;
- (h) To sue and recover, with the approval of the court, all property or money of the debtor paid, transferred or disbursed in fraud of the debtor or its creditors, or which constitute undue preference of creditor/s;
- (i) To monitor the operations and the business of the debtor to ensure that no payments or transfers of property are made other than in the ordinary course of business;
- (j) With the court's approval, to engage the services of or to employ persons or entities to assist him in the discharge of his functions;
- (k) To determine the manner by which the debtor may be best rehabilitated, to review, revise and/or recommend action on the Rehabilitation Plan and submit the same or a new one to the court for approval;
- (l) To implement the Rehabilitation Plan as approved by the court, if so provided under the Rehabilitation Plan;
- (m) To assume and exercise the powers of management of the debtor, if directed by the court pursuant to Section 36 hereof;
- (n) To exercise such other powers as may, from time to time, be conferred upon him by the court; and
- (o) To submit a status report on the rehabilitation proceedings every quarter or as may be required by the court *motu proprio*, or upon motion of any creditor, or as may be provided, in the Rehabilitation Plan.

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

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

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

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

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

SECTION 35. *Vacancy.* — In case the position of rehabilitation receiver is vacated for any reason whatsoever, the court shall direct the debtor and the creditors

to submit the name/s of their nominee/s to the position. The court may appoint any of the qualified nominees, or any other person qualified for the position.

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

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

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

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

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

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

SECTION 38. *Qualifications of Members of the Management Committee.* — The qualifications and disqualifications of the members of the management committee shall be set forth in the procedural rules, taking into consideration the

nature of the business of the debtor and the need to protect the interest of all stakeholders concerned.

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

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

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

- (a) he is a creditor, owner, partner or stockholder of the debtor;
- (b) he is engaged in a line of business which competes with that of the debtor;
- (c) he is, or was, within five (5) years from the filing of the petition, a director, officer, owner, partner or employee of the debtor or any of the creditors, or the auditor or accountant of the debtor;
- (d) he is, or was, within two (2) years from the filing of the petition, an underwriter of the outstanding securities of the debtor;
- (e) he is related by consanguinity or affinity within the fourth civil degree to any individual creditor, owner/s of a sole proprietorship-debtor, partners of a partnership-debtor or to any stockholder, director, officer, employee or underwriter of a corporation-debtor; or
- (f) he has any other direct or indirect material interest in the debtor or any of the creditors.

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

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

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

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

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

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

may be defined by the procedural rules in order to facilitate the rehabilitation process.

(D) Determination of Claims.

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

SECTION 45. *Opposition or Challenge of Claims.* — Within thirty (30) days from the expiration of the period stated in the immediately preceding section, the debtor, creditors, stakeholders and other interested parties may submit a challenge to claim/s to the court, serving a certified copy on the rehabilitation receiver and the creditor holding the challenged claim/s. Upon the expiration of the thirty (30)-day period, the rehabilitation receiver shall submit to the court the registry of claims which shall include undisputed claims that have not been subject to challenge.

SECTION 46. *Appeal.* — Any decision of the rehabilitation receiver regarding a claim may be appealed to the court.

(E) Governance.

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

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

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

SECTION 49. *Sale of Assets.* — The court, upon application of the

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

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

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

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

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

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

- (a) demand the surrender or the transfer of the possession or control of such property to the rehabilitation receiver or any other person, subject to payment of the claims secured by any possessory lien/s thereon;

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- (b) allow said third parties to retain possession or control, if such an arrangement would more likely preserve or increase the value of the property in question or the total value of the assets of the debtor; or
 - (c) undertake any other disposition of the said property as may be beneficial for the rehabilitation of the debtor, after notice and hearing, and approval of the court.

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

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

SECTION 53. *Assets Subject to Rapid Obsolescence, Depreciation and Diminution of Value.* — Upon the application of a secured creditor holding a lien against or holder of an ownership interest in property held by the debtor that is subject to potentially rapid obsolescence, depreciation or diminution in value, the court shall, after notice and hearing, order the debtor or rehabilitation receiver to take reasonable steps necessary to prevent the depreciation. If depreciation cannot be avoided and such depreciation is jeopardizing the security or property interest of the secured

creditor or owner, the court shall:

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

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

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

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

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

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

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

(G) Avoidance Proceedings.

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

- (a) provides unreasonably inadequate consideration to the debtor and is executed within ninety (90) days prior to the commencement date;
- (b) involves an accelerated payment of a claim to a creditor within ninety

(90) days prior to the commencement date;

- (c) provides security or additional security executed within ninety (90) days prior to the commencement date;
- (d) involves creditors, where a creditor obtained, or received the benefit of, more than its *pro rata* share in the assets of the debtor, executed at a time when the debtor was insolvent; or
- (e) is intended to defeat, delay or hinder the ability of the creditors to collect claims where the effect of the transaction is to put assets of the debtor beyond the reach of creditors or to otherwise prejudice the interests of creditors.

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

SECTION 59. *Actions for Rescission or Nullity.* — (a) The rehabilitation receiver or, with his conformity, any creditor may initiate and prosecute any action to rescind, or declare null and void any transaction described in Section 58 hereof. If the rehabilitation receiver does not consent to the filing or prosecution of such action, any creditor may seek leave of the court to commence said action.

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

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

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

(H) Treatment of Secured Creditors.

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

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

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

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

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

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

Upon showing of a lack of protection, the court shall order the debtor or the rehabilitation receiver to make arrangements to provide for the insurance or maintenance of the property; or to make payments or otherwise provide additional or

replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may modify the Stay Order to allow the secured creditor lacking adequate protection to enforce its security claim against the debtor: *Provided, however,* That the court may deny the creditor the remedies in this paragraph if the property subject of the enforcement is required for the rehabilitation of the debtor.

(I) Administration of Proceedings.

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

- (a) specify the underlying assumptions, the financial goals and the procedures proposed to accomplish such goals;
- (b) compare the amounts expected to be received by the creditors under the Rehabilitation Plan with those that they will receive if liquidation ensues within the next one hundred twenty (120) days;
- (c) contain information sufficient to give the various classes of creditors a reasonable basis for determining whether supporting the Plan is in their financial interest when compared to the immediate liquidation of the debtor, including any reduction of principal interest and penalties payable to the creditors;
- (d) establish classes of voting creditors;
- (e) establish subclasses of voting creditors if prior approval has been granted by the court;
- (f) indicate how the insolvent debtor will be rehabilitated including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of a new business entity or other similar arrangements as may be necessary to restore the financial well-being and viability of the insolvent debtor;
- (g) specify the treatment of each class or subclass described in subsections (d) and (e);
- (h) provide for equal treatment of all claims within the same class or subclass, unless a particular creditor voluntarily agrees to less favorable

treatment;

- (i) ensure that the payments made under the plan follow the priority established under the provisions of the Civil Code on concurrence and preference of credits and other applicable laws;
- (j) maintain the security interest of secured creditors and preserve the liquidation value of the security unless such has been waived or modified voluntarily;
- (k) disclose all payments to creditors for pre-commencement debts made during the proceedings and the justifications thereof;
- (l) describe the disputed claims and the provisioning of funds to account for appropriate payments should the claim be ruled valid or its amount adjusted;
- (m) identify the debtor's role in the implementation of the Plan;
- (n) state any rehabilitation covenants of the debtor, the breach of which shall be considered a material breach of the Plan;
- (o) identify those responsible for the future management of the debtor and the supervision and implementation of the Plan, their affiliation with the debtor and their remuneration;
- (p) address the treatment of claims arising after the confirmation of the Rehabilitation Plan;
- (q) require the debtor and its counter-parties to adhere to the terms of all contracts that the debtor has chosen to confirm;
- (r) arrange for the payment of all outstanding administrative expenses as a condition to the Plan's approval unless such condition has been waived in writing by the creditors concerned;
- (s) arrange for the payment of all outstanding taxes and assessments, or an adjusted amount pursuant to a compromise settlement with the BIR or other applicable tax authorities;
- (t) include a certified copy of a certificate of tax clearance or evidence of a compromise settlement with the BIR;

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- (u) include a valid and binding resolution of a meeting of the debtor's stockholders to increase the shares by the required amount in cases where the Plan contemplates an additional issuance of shares by the debtor;
 - (v) state the compensation and status, if any, of the rehabilitation receiver after the approval of the Plan; and
 - (w) contain provisions for conciliation and/or mediation as a prerequisite to court assistance or intervention in the event of any disagreement in the interpretation or implementation of the Rehabilitation Plan.

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

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

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

- (a) The Rehabilitation Plan complies with the requirements specified in this Act;
- (b) The rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;
- (c) The shareholders, owners or partners of the juridical debtor lose at least

their controlling interest as a result of the Rehabilitation Plan; and

- (d) The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation.

SECTION 65. *Submission of Rehabilitation Plan to the Court.* — If the Rehabilitation Plan is approved, the rehabilitation receiver shall submit the same to the court for confirmation. Within five (5) days from receipt of the Rehabilitation Plan, the court shall notify the creditors that the Rehabilitation Plan has been submitted for confirmation, that any creditor may obtain copies of the Rehabilitation Plan and that any creditor may file an objection thereto.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 72. *Period for Confirmation of the Rehabilitation Plan.* — The court shall have a maximum period of one (1) year from the date of the filing of the petition to confirm a Rehabilitation Plan.

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

SECTION 73. *Accounting Discharge of Rehabilitation Receiver.* — Upon the confirmation of the Rehabilitation Plan, the rehabilitation receiver shall provide a final report and accounting to the court. Unless the Rehabilitation Plan specifically requires and describes the role of the rehabilitation receiver after the approval of the Rehabilitation Plan, the court shall discharge the rehabilitation receiver of his duties.

(J) Termination of Proceedings.

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

There is failure of rehabilitation in the following cases:

- (a) Dismissal of the petition by the court;
- (b) The debtor fails to submit a Rehabilitation Plan;
- (c) Under the Rehabilitation Plan submitted by the debtor, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period;

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- (d) The Rehabilitation Plan or its amendment is approved by the court but in the implementation thereof, the debtor fails to perform its obligations thereunder, or there is a failure to realize the objectives, targets or goals set forth therein, including the timelines and conditions for the settlement of the obligations due to the creditors and other claimants;
 - (e) The commission of fraud in securing the approval of the Rehabilitation Plan or its amendment; and
 - (f) Other analogous circumstances as may be defined by the rules of procedure.

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

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

SECTION 75. *Effects of Termination.* — Termination of the proceedings shall result in the following:

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

Provided, however, That if the termination of proceedings is due to failure of

rehabilitation or dismissal of the petition for reasons other than technical grounds, the proceedings shall be immediately converted to liquidation as provided in Section 92 of this Act.

CHAPTER III

Pre-Negotiated Rehabilitation

SECTION 76. *Petition by Debtor.* — An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a pre-negotiated Rehabilitation Plan which has been endorsed or approved by creditors holding at least two-thirds (2/3) of the total liabilities of the debtor, including secured creditors holding more than fifty percent (50%) of the total secured claims of the debtor and unsecured creditors holding more than fifty percent (50%) of the total unsecured claims of the debtor. The petition shall include, as a minimum:

- (a) a schedule of the debtor's debts and liabilities;
- (b) an inventory of the debtor's assets;
- (c) the pre-negotiated Rehabilitation Plan, including the names of at least three (3) qualified nominees for rehabilitation receiver; and
- (d) a summary of disputed claims against the debtor and a report on the provisioning of funds to account for appropriate payments should any such claims be ruled valid or their amounts adjusted.

SECTION 77. *Issuance of Order.* — Within five (5) working days, and after determination that the petition is sufficient in form and substance, the court shall issue an Order which shall:

- (a) identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) declare that the debtor is under rehabilitation;
- (c) summarize the ground/s for the filing of the petition;
- (d) direct the publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of its issuance;

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- (e) direct the service by personal delivery of a copy of the petition on each creditor who is not a petitioner holding at least ten percent (10%) of the total liabilities of the debtor, as determined in the schedule attached to the petition, within three (3) days;
 - (f) state that copies of the petition and the Rehabilitation Plan are available for examination and copying by any interested party;
 - (g) state that creditors and other interested parties opposing the petition or Rehabilitation Plan may file their objections or comments thereto within a period of not later than twenty (20) days from the second publication of the Order;
 - (h) appoint a rehabilitation receiver, if provided for in the Plan; and
 - (i) include a Suspension or Stay Order as described in this Act.

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

SECTION 79. *Objection to the Petition or Rehabilitation Plan.* — Any creditor or other interested party may submit to the court a verified objection to the petition or the Rehabilitation Plan not later than eight (8) days from the date of the second publication of the Order mentioned in Section 77 hereof. The objections shall be limited to the following:

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

Copies of any objection to the petition or the Rehabilitation Plan shall be

served on the debtor, the rehabilitation receiver (if applicable), the secured creditor with the largest claim and who supports the Rehabilitation Plan, and the unsecured creditor with the largest claim and who supports the Rehabilitation Plan.

SECTION 80. *Hearing on the Objections.* — After receipt of an objection, the court shall set the same for hearing. The date of the hearing shall be no earlier than twenty (20) days and no later than thirty (30) days from the date of the second publication of the Order mentioned in Section 77 hereof. If the court finds merit in the objection, it shall direct the debtor, when feasible, to cure the defect within a reasonable period. If the court determines that the debtor or creditors supporting the Rehabilitation Plan acted in bad faith, or that the objection is non-curable, the court may order the conversion of the proceedings into liquidation. A finding by the court that the objection has no substantial merit, or that the same has been cured, shall be deemed an approval of the Rehabilitation Plan.

SECTION 81. *Period for Approval of Rehabilitation Plan.* — The court shall have a maximum period of one hundred twenty (120) days from the date of the filing of the petition to approve the Rehabilitation Plan. If the court fails to act within the said period, the Rehabilitation Plan shall be deemed approved.

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

CHAPTER IV

Out-of-Court or Informal Restructuring Agreements or Rehabilitation Plans

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

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

- (a) The debtor must agree to the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan;

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- (b) It must be approved by creditors representing at least sixty-seven percent (67%) of the secured obligations of the debtor;
 - (c) It must be approved by creditors representing at least seventy-five percent (75%) of the unsecured obligations of the debtor; and
 - (d) It must be approved by creditors holding at least eighty-five percent (85%) of the total liabilities, secured and unsecured, of the debtor.

SECTION 85. *Standstill Period.* — A standstill period that may be agreed upon by the parties pending negotiation and finalization of the out-of-court or informal restructuring/workout agreement or Rehabilitation Plan contemplated herein shall be effective and enforceable not only against the contracting parties but also against the other creditors: *Provided*, That (a) such agreement is approved by creditors representing more than fifty percent (50%) of the total liabilities of the debtor; (b) notice thereof is published in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; and (c) the standstill period does not exceed one hundred twenty (120) days from the date of effectivity. The notice must invite creditors to participate in the negotiation for out-of-court rehabilitation or restructuring agreement and notify them that said agreement will be binding on all creditors if the required majority votes prescribed in Section 84 of this Act are met.

SECTION 86. *Cram Down Effect.* — A restructuring/workout agreement or Rehabilitation Plan that is approved pursuant to an informal workout framework referred to in this chapter shall have the same legal effect as confirmation of a Plan under Section 69 hereof. The notice of the Rehabilitation Plan or restructuring agreement or Plan shall be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the Philippines. The Rehabilitation Plan or restructuring agreement shall take effect upon the lapse of fifteen (15) days from the date of the last publication of the notice thereof.

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

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

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

CHAPTER V

Liquidation of Insolvent Juridical Debtors

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

- (a) a schedule of the debtor's debts and liabilities including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any;
- (b) an inventory of all its assets including receivables and claims against third parties; and
- (c) the names of at least three (3) nominees to the position of liquidator.

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

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

SECTION 91. *Involuntary Liquidation.* — Three (3) or more creditors the aggregate of whose claims is at least either One million pesos (Php1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital stock or partner's contributions of the debtor, whichever is higher, may apply for and seek the liquidation of an insolvent debtor by filing a petition for liquidation of the debtor with the court. The petition shall show that:

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

At any time during the pendency of or after a rehabilitation court-supervised or pre-negotiated rehabilitation proceedings, three (3) or more creditors whose claims is at least either One million pesos (Php1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital or partner's contributions of the debtor, whichever is higher, may also initiate liquidation proceedings by filing a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified, shall contain or set forth the same matters required in the preceding paragraph, and state that the movants are seeking the immediate liquidation of the debtor.

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

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

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

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

SECTION 93. *Powers of the Securities and Exchange Commission (SEC).*

— The provisions of this chapter shall not affect the regulatory powers of the SEC under Section 6 of Presidential Decree No. 902-A, as amended, with respect to any dissolution and liquidation proceeding initiated and heard before it.

CHAPTER VI

Insolvency of Individual Debtors

(A) Suspension of Payments.

SECTION 94. *Petition.* — An individual debtor who, possessing sufficient property to cover all his debts but foreseeing the impossibility of meeting them when they respectively fall due, may file a verified petition that he be declared in the state of suspension of payments by the court of the province or city in which he has resided for six (6) months prior to the filing of his petition. He shall attach to his petition, as a minimum: (a) a schedule of debts and liabilities; (b) an inventory of assets; and (c) a proposed agreement with his creditors.

SECTION 95. *Action on the Petition.* — If the court finds the petition sufficient in form and substance, it shall, within five (5) working days from the filing of the petition, issue an Order:

- (a) calling a meeting of all the creditors named in the schedule of debts and liabilities at such time not less than fifteen (15) days nor more than forty (40) days from the date of such Order and designating the date, time and place of the meeting;
- (b) directing such creditors to prepare and present written evidence of their claims before the scheduled creditors' meeting;
- (c) directing the publication of the said order in a newspaper of general circulation published in the province or city in which the petition is filed once a week for two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of the issuance of the Order;
- (d) directing the clerk of court to cause the sending of a copy of the Order by registered mail, postage prepaid, to all creditors named in the schedule of debts and liabilities;
- (e) forbidding the individual debtor from selling, transferring, encumbering

or disposing in any manner of his property, except those used in the ordinary operations of commerce or of industry in which the petitioning individual debtor is engaged, so long as the proceedings relative to the suspension of payments are pending;

- (f) prohibiting the individual debtor from making any payment outside of the necessary or legitimate expenses of his business or industry, so long as the proceedings relative to the suspension of payments are pending; and
- (g) appointing a commissioner to preside over the creditors' meeting.

SECTION 96. *Actions Suspended.* — Upon motion filed by the individual debtor, the court may issue an order suspending any pending execution against the individual debtor: *Provided*, that properties held as security by secured creditors shall not be the subject of such suspension order. The suspension order shall lapse when three (3) months shall have passed without the proposed agreement being accepted by the creditors or as soon as such agreement is denied.

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

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

SECTION 97. *Creditors' Meeting.* — The presence of creditors holding claims amounting to at least three-fifths (3/5) of the liabilities shall be necessary for holding a meeting. The commissioner appointed by the court shall preside over the meeting and the clerk of court shall act as the secretary thereof, subject to the following rules:

- (a) The clerk shall record the creditors present and amount of their respective claims;
- (b) The commissioner shall examine the written evidence of the claims. If the creditors present hold at least three-fifths (3/5) of the liabilities of the individual debtor, the commissioner shall declare the meeting open

for business;

- (c) The creditors and individual debtor shall discuss the propositions in the proposed agreement and put them to a vote;
- (d) To form a majority, it is necessary:
 - (1) that two-thirds (2/3) of the creditors voting unite upon the same proposition; and
 - (2) that the claims represented by said majority vote amount to at least three-fifths (3/5) of the total liabilities of the debtor mentioned in the petition; and
- (e) After the result of the voting has been announced, all protests made against the majority vote shall be drawn up, and the commissioner and the individual debtor together with all creditors taking part in the voting shall sign the affirmed propositions.

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

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

SECTION 99. *Rejection of the Proposed Agreement.* — The proposed agreement shall be deemed rejected if the number of creditors required for holding a meeting do not attend thereat, or if the two (2) majorities mentioned in Section 97 hereof are not in favor thereof. In such instances, the proceeding shall be terminated without recourse and the parties concerned shall be at liberty to enforce the rights which may correspond to them.

SECTION 100. *Objections.* — If the proposal of the individual debtor, or any amendment thereof made during the creditors' meeting, is approved by the majority of creditors in accordance with Section 97 hereof, any creditor who attended the meeting and who dissented from and protested against the vote of the majority may file an objection with the court within ten (10) days from the date of the last creditors' meeting. The causes for which objection may be made to the decision made

by the majority during the meeting shall be: (a) defects in the call for the meeting, in the holding thereof, and in the deliberations had thereat which prejudice the rights of the creditors; (b) fraudulent connivance between one or more creditors and the individual debtor to vote in favor of the proposed agreement; or (c) fraudulent conveyance of claims for the purpose of obtaining a majority. The court shall hear and pass upon such objection as soon as possible and in a summary manner.

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

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

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

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

(B) Voluntary Liquidation.

SECTION 103. *Application.* — An individual debtor whose properties are not sufficient to cover his liabilities, and owing debts exceeding Five hundred

thousand pesos (Php500,000.00), may apply to be discharged from his debts and liabilities by filing a verified petition with the court of the province or city in which he has resided for six (6) months prior to the filing of such petition. He shall attach to his petition a schedule of debts and liabilities and an inventory of assets. The filing of such petition shall be an act of insolvency.

SECTION 104. *Liquidation Order.* — If the court finds the petition sufficient in form and substance, it shall, within five (5) working days, issue the Liquidation Order mentioned in Section 112 hereof.

(C) Involuntary Liquidation.

SECTION 105. *Petition; Acts of Insolvency.* — Any creditor or group of creditors with a claim of, or with claims aggregating, at least Five hundred thousand pesos (Php500,000.00) may file a verified petition for liquidation with the court of the province or city in which the individual debtor resides.

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

- (a) That such person is about to depart or has departed from the Republic of the Philippines, with intent to defraud his creditors;
- (b) That being absent from the Republic of the Philippines, with intent to defraud his creditors, he remains absent;
- (c) That he conceals himself to avoid the service of legal process for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (d) That he conceals, or is removing, any of his property to avoid its being attached or taken on legal process;
- (e) That he has suffered his property to remain under attachment or legal process for three (3) days for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (f) That he has confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying the liquidation or of defrauding any creditor or claimant;
- (g) That he has willfully suffered judgment to be taken against him by

default for the purpose of hindering or delaying the liquidation or of defrauding his creditors;

- (h) That he has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder or delay the liquidation or defraud any one of his creditors;
- (i) That he has made any assignment, gift, sale, conveyance or transfer of his estate, property, rights or credits with intent to hinder or delay the liquidation or defraud his creditors;
- (j) That he has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights or credits;
- (k) That being a merchant or tradesman, he has generally defaulted in the payment of his current obligations for a period of thirty (30) days;
- (l) That for a period of thirty (30) days, he has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and
- (m) That an execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment.

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

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

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

SECTION 108. *Absent Individual Debtor.* — In all cases where the individual debtor resides out of the Republic of the Philippines; or has departed therefrom; or cannot, after due diligence, be found therein; or conceals himself to avoid service of the Order to show cause, or any other preliminary process or orders in the matter, then the petitioning creditors, upon submitting the affidavits requisite to procure an Order of publication, and presenting a bond in double the amount of the aggregate sum of their claims against the individual debtor, shall be entitled to an Order of the court directing the sheriff of the province or city in which the matter is pending to take into his custody a sufficient amount of property of the individual debtor to satisfy the demands of the petitioning creditors and the costs of the proceedings. Upon receiving such Order of the court to take into custody property of the individual debtor, it shall be the duty of the sheriff to take possession of the property and effects of the individual debtor, not exempt from execution, to an extent sufficient to cover the amount provided for, and to prepare, within three (3) days from the time of taking such possession, a complete inventory of all the property so taken, and to return it to the court as soon as completed. The time for taking the inventory and making return thereof may be extended for good cause shown to the court. The sheriff shall also prepare a schedule of the names and residences of the creditors, and the amount due each, from the books of the debtor, or from such other papers or data of the individual debtor available as may come to his possession, and shall file such schedule or list of creditors and inventory with the clerk of court.

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

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

Any person interested in the estate may take exception to the sufficiency of the sureties on such bond or bonds. When excepted to, the petitioner's sureties, upon notice to the person excepting of not less than two (2) nor more than five (5) days, must justify as to their sufficiency; and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the judge shall issue an Order vacating the order to take the property of the individual debtor into the custody of the sheriff, or denying the appeal, as the case may be.

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

CHAPTER VII

Provisions Common to Liquidation in Insolvency of Individual and Juridical Debtors

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

(A) The Liquidation Order.

SECTION 112. *Liquidation Order.* — The Liquidation Order shall:

(a) declare the debtor insolvent;

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- (b) order the liquidation of the debtor and, in the case of a juridical debtor, declare it as dissolved;
 - (c) order the sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
 - (d) order the publication of the petition or motion in a newspaper of general circulation once a week for two (2) consecutive weeks;
 - (e) direct payments of any claims and conveyance of any property due the debtor to the liquidator;
 - (f) prohibit payments by the debtor and the transfer of any property by the debtor;
 - (g) direct all creditors to file their claims with the liquidator within the period set by the rules of procedure;
 - (h) authorize the payment of administrative expenses as they become due;
 - (i) state that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of liquidator; and
 - (j) set the case for hearing for the election and appointment of the liquidator, which date shall not be less than thirty (30) days nor more than forty-five (45) days from the date of the last publication.

SECTION 113. *Effects of the Liquidation Order.* — Upon the issuance of the Liquidation Order:

- (a) the juridical debtor shall be deemed dissolved and its corporate or juridical existence terminated;
- (b) legal title to and control of all the assets of the debtor, except those that may be exempt from execution, shall be deemed vested in the liquidator or, pending his election or appointment, with the court;
- (c) all contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator, within ninety (90) days from the date of his assumption of office, declares otherwise and the contracting party agrees;

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- (d) no separate action for the collection of an unsecured claim shall be allowed. Such actions already pending will be transferred to the Liquidator for him to accept and settle or contest. If the liquidator contests or disputes the claim, the court shall allow, hear and resolve such contest except when the case is already on appeal. In such a case, the suit may proceed to judgment, and any final and executory judgment therein for a claim against the debtor shall be filed and allowed in court; and
 - (e) no foreclosure proceeding shall be allowed for a period of one hundred eighty (180) days.

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

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

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

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

(B) The Liquidator.

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

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

SECTION 116. *Court-Appointed Liquidator.* — The court may appoint the liquidator if:

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

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

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

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

SECTION 119. *Powers, Duties and Responsibilities of the Liquidator.* — The liquidator shall be deemed an officer of the court with the principal duty of

preserving and maximizing the value and recovering the assets of the debtor, with the end of liquidating them and discharging to the extent possible all the claims against the debtor. The powers, duties and responsibilities of the liquidator shall include, but not be limited to:

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

In addition to the rights and duties of a rehabilitation receiver, the liquidator shall have the right and duty to take all reasonable steps to manage and dispose of the debtor's assets with a view towards maximizing the proceedings therefrom, to pay creditors and stockholders, and to terminate the debtor's legal existence. Other duties of the liquidator in accordance with this section may be established by procedural rules.

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

SECTION 120. *Compensation of the Liquidator.* — The liquidator and the persons and entities engaged or employed by him to assist in the discharge of his

powers and duties shall be entitled to such reasonable compensation as may be determined by the liquidation court, which shall not exceed the maximum amount as may be prescribed by the Supreme Court.

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

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

(C) Determination of Claims.

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

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

SECTION 125. *Opposition or Challenge to Claims.* — Within thirty (30) days from the expiration of the period for filing of applications for recognition of claims, creditors, individual debtors, owner/s of the sole proprietorship-debtor, partners of the partnership-debtor and shareholders or members of the

corporation-debtor and other interested parties may submit a challenge to a claim or claims to the court, serving a certified copy on the liquidator and the creditor holding the challenged claim. Upon the expiration of the thirty (30)-day period, the rehabilitation receiver shall submit to the court the registry of claims containing the undisputed claims that have not been subject to challenge. Such claims shall become final upon the filing of the register and may be subsequently set aside only on grounds of fraud, accident, mistake or inexcusable neglect.

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

(D) Avoidance Proceedings.

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

SECTION 128. *Actions for Rescission or Nullity.* — (a) The liquidator or, with his conformity, a creditor may initiate and prosecute any action to rescind, or declare null and void any transaction described in the immediately preceding paragraph. If the liquidator does not consent to the filing or prosecution of such action, any creditor may seek leave of the court to commence said action.

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

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

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

belongs to the estate.

(E) The Liquidation Plan.


SECTION 129. *The Liquidation Plan.* — Within three (3) months from his assumption into office, the Liquidator shall submit a Liquidation Plan to the court. The Liquidation Plan shall, as a minimum, enumerate all the assets of the debtor, all the claims against the debtor and a schedule of liquidation of the assets and payment of the claims.

SECTION 130. *Exempt Property to be Set Apart.* — It shall be the duty of the court, upon petition and after hearing, to exempt and set apart, for the use and benefit of the said insolvent, such real and personal property as is by law exempt from execution, and also a homestead; but no such petition shall be heard as aforesaid until it is first proved that notice of the hearing of the application therefor has been duly given by the clerk, by causing such notice to be posted in at least three (3) public places in the province or city at least ten (10) days prior to the time of such hearing, which notice shall set forth the name of the said insolvent debtor, and the time and place appointed for the hearing of such application, and shall briefly indicate the homestead sought to be exempted or the property sought to be set aside; and the decree must show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of that fact.

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

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

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

SECTION 133. *Concurrence and Preference of Credits.* ¹ — The Liquidation Plan and its implementation shall ensure that the concurrence and preference of credits as enumerated in the Civil Code of the Philippines and other relevant laws shall be observed, unless a preferred creditor voluntarily waives his

preferred right. For purposes of this chapter, credits for services rendered by employees or laborers to the debtor shall enjoy first preference under Article 2244 of the Civil Code, unless the claims constitute legal liens under Articles 2241 and 2242 thereof.

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

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

(F) Liquidation of a Securities Market Participant.

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

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

CHAPTER VIII

Proceedings Ancillary to Other Insolvency or Rehabilitation Proceedings

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

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

SECTION 138. *Application of Relevant Legislation.* — The liquidation of

banks, ² financial institutions, ³ insurance companies ⁴ and pre-need companies ⁵ shall be determined by relevant legislation. The provisions in this Act shall apply in a suppletory manner.

(B) Cross-Border Insolvency Proceedings.

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

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

SECTION 141. *Provision of Relief.* — The court may issue orders:

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

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

- (a) the protection of creditors in the Philippines and the inconvenience in pursuing their claims in a foreign proceeding;
- (b) the just treatment of all creditors through resort to a unified insolvency or rehabilitation proceeding;
- (c) whether other jurisdictions have given recognition to the foreign proceeding;
- (d) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with

the manner prescribed in this Act; and

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

CHAPTER IX

Funds for Rehabilitation of Government-Owned and -Controlled Corporations

SECTION 143. *Funds for Rehabilitation of Government-owned and -Controlled Corporations.* — Public funds for the rehabilitation of government-owned and -controlled corporations shall be released only pursuant to an appropriation by Congress and shall be supported by funds actually available as certified by the National Treasurer.

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

CHAPTER X

Miscellaneous Provisions

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

SECTION 145. *Penalties.* — An owner, partner, director, officer or other employee of the debtor who commits any one of the following acts shall, upon conviction thereof, be punished by a fine of not more than One million pesos (Php1,000,000.00) and imprisonment for not less than three (3) months nor more than five (5) years for each offense:

- (a) if he shall, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, hide or conceal, or destroy or cause to be destroyed or hidden any property belonging to the debtor; or if he shall hide, destroy, alter, mutilate or falsify, or cause to be hidden, destroyed, altered, mutilated or falsified, any book, deed, document or writing relating thereto; or if he shall, with intent to defraud the creditors of the debtor, make any payment, sale, assignment, transfer or conveyance of any property belonging to the debtor;

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- (b) if he shall, having knowledge or belief of any person having proved a false or fictitious claim against the debtor, fail to disclose the same to the rehabilitation receiver or liquidator within one (1) month after coming to said knowledge or belief; or if he shall attempt to account for any of the debtor's property by fictitious losses or expenses; or
 - (c) if he shall knowingly violate a prohibition or knowingly fail to undertake an obligation established by this Act.

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

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

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

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

SECTION 150. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation.

Published in The Philippine Star on August 16, 2010.

Endnotes

1 (Popup - Popup)

Supreme Court Memorandum Order No. 46-10

PD 1460

RA 7653

ACT 1956

2 (Popup - Popup)

- * Lapsed into law on July 18, 2010 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.