

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
First Regular Session



HOUSE BILL NO. 1920

Introduced by Representative Robert 'Ace' Barbers

EXPLANATORY NOTE

Business enterprises, especially corporations, play a significant role in the economic development of the country as well as in the employment of a burgeoning working population of Filipinos. However, the relatively shorter span of the country's boom and bust economic cycle renders these entities vulnerable to bankruptcy.

While there seems to be no specific data on the magnitude of bankruptcy among these entities, there is however a reasonable fear that it is quite significant. For instance, the 2002 estimates of the *Bangko Sentral ng Pilipinas* indicate that the financial system's exposure to borrowers with application for suspension of payments is close to Php 42B, or about 2.25% of the total loan portfolio of the whole banking system.

Existing bankruptcy legislation in the country however are not only antiquated; they provide limited remedies to business entities and are therefore ill-equipped to salvage enterprises from the pit of financial distress. The proposed Business Entities Recovery and Insolvency Act seeks to overhaul the bankruptcy and rehabilitation regime in the country with three particular broad reform objectives in mind: (1) inject speed and efficiency in the resolution of rehabilitation and insolvency cases; (2) adjust and balance the rights of creditors and debtors; and (3) adhere to international standards and best practices.

By injecting speed and efficiency in the resolution of rehabilitation and insolvency proceedings, the proposed act intends to stem further financial losses to the business enterprise, thereby increasing the possibility of business revival. Where however rehabilitation appears to be improbable, the act intends to hasten the winding up process in order to adjudicate the claims of parties in interest in the most orderly and speedy manner.

Any rehabilitation proceedings necessarily requires, to a lesser or greater extent, the suspension of creditor rights in order to preserve not only business assets but the business itself as a going concern. The proposed act therefore calibrates the rights of both

Finally, the proposed measure incorporates international best practices and standards realized from the harrowing experiences of big businesses that have gone down the road of bankruptcy. It fine-tunes the innovative legal solutions employed in other jurisdictions, as well as the recommendations embodied in various international fora and policy studies on the matter to the distinct requirements of our local business context.

As the economy adjusts to the unfolding new economic order – even as it has to confront the recurrent problems posed by the prevailing limits of its own structure – a number of businesses, always significant, will find themselves within the radar of economic distress. This bill is designed to make sure that they will be able to evade the catastrophic pull of bankruptcy and nurse them back to health and, ultimately, enable them to be truly engines of economic growth and development.

In view of the foregoing, approval of this bill is earnestly sought.



ROBERT ACE S. BARBERS

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

SEC. 1. *Title.* – This Act shall be known as the Business Entities Recovery and Insolvency Act.

SEC. 3. *Nature of proceedings.* The proceedings under this act shall be *in rem* in nature and 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.

b) arising from such filing of the petition in connection therewith, including those incurred for the rehabilitation or liquidation of the debtor;

- 1 c) incurred in the ordinary course of business after the filing of the petition;
2 and
3 d) that are otherwise authorized or mandated under this act.
- 4 2) "Bankruptcy estate" or the estate of the insolvent debtor includes all the
5 property and assets of the debtor as of the date the insolvency proceedings
6 begins, plus the property and assets acquired by the rehabilitation receiver or
7 liquidator after that date, as well as all other property and assets in which the
8 debtor has an ownership interest, whether or not these property and assets are in
9 the debtor's possession at the time of the commencement of the insolvency
10 proceedings: *Provided*, that trust assets and bailment, and other property and
11 assets of a third party that are in the possession of the debtor when the
12 proceedings commence, are excluded from the bankruptcy estate.
- 13 3) "Claim" shall include all claims or demands of whatever nature or character
14 against the debtor or its property, whether for money or otherwise. This includes
15 claims against directors and officers of the debtor arising from acts done in the
16 discharge of their functions falling within the scope of their authority; *Provided*,
17 that, this inclusion does not prohibit the creditors or third parties from filing
18 cases against the directors and officers acting in their personal capacities.
- 19 4) "Commencement of Proceedings" shall refer to the date on which the court
20 issued the order commencing the proceedings, which shall be retroactive to the
21 date of filing of the petition for voluntary or involuntary proceedings.
- 22 5) "Creditor" shall refer to a natural or juridical person holding a claim against the
23 debtor.
- 24 6) "Date of liquidation" shall refer to the date on which the court issues an order
25 converting the proceedings from rehabilitation to liquidation.
- 26 7) "Debtor" shall mean, unless otherwise expressly excluded in this Act, any
27 partnership, association, or corporation, whether stock or non-stock, on whose
28 behalf a petition has been filed under this Act.
- 29 8) "Encumbered property" shall refer to movable or immovable property over
30 which a lien exists.
- 31 9) "General unsecured creditor" shall refer to a creditor whose claim or a portion
32 thereof is neither secured, preferred, nor subordinated under this Act.
- 33 10) "Involuntary proceedings" shall refer to proceedings initiated by creditors.
- 34 11) "Lien" shall refer to a statutory or consensual claim or charge on movable or
35 immovable property that gives the creditor the right to resort to such property
36 for the payment of a debt secured by such lien.
- 37 12) "Officer" shall refer to an individual holding a management position described
38 in or contemplated by a juridical entity's articles of incorporation, by-laws or
39 equivalent documents, except for the corporate secretary, the assistant corporate
40 secretary, and the external auditor.
- 41 13) "Ownership interest" shall refer to the ownership interest of third parties in
42 property held by the debtor, including those covered by trust receipts or
43 assignments of receivables.
- 44 14) "Party to the proceedings" may refer to the debtor, a creditor, the unsecured
45 creditors' committee, a stakeholder, a party with an ownership interest in
46 property held by the debtor, a secured party, the rehabilitation receiver,

- 1 liquidator, or any other juridical or natural person who stands to be benefited or
2 injured by the outcome of the proceedings and whose notice of appearance is
3 accepted by the court.
- 4 15) "Possessory lien" shall refer to a lien on property the possession of which has
5 been transferred to the creditor or a representative or agent thereof.
- 6 16) "Proceedings" shall refer to judicial proceedings commenced by the court's
7 acceptance of a petition filed under this Act.
- 8 17) "Property of others" shall refer to property held by the debtor in which other
9 persons have an ownership interest.
- 10 18) "Publication notice" shall refer to notice through publication in a newspaper of
11 general circulation in the Philippines on a business day for two consecutive
12 weeks.
- 13 19) "Rehabilitation Receiver" shall refer to the person, or persons, natural or
14 juridical, appointed by the court pursuant to section 22 of this act and which
15 shall have the functions and duties enumerated in sections 46 and 47 hereof.
- 16 20) "Secured claim" shall refer to a claim secured by a lien.
- 17 21) "Secured creditor" shall refer to a creditor whose claim is secured by a lien.
- 18 22) "Secured party" shall refer to a secured creditor or the agent or representative of
19 such secured creditor.
- 20 23) "Stakeholder" shall refer, in addition to a holder of shares of a corporation, to a
21 member of a non-stock corporation or association, or a partner in a partnership.
- 22 24) "Unsecured claim" shall refer to a claim not secured by a lien.
- 23 25) "Unsecured creditor" shall refer to a creditor with an unsecured claim.
- 24 26) "Voluntary proceedings" shall refer to proceedings initiated by the debtor.
- 25 27) "Voting creditor" shall refer to a creditor that is a member of a class of
26 creditors, the consent of which is necessary for the approval of a rehabilitation
27 plan under this Act.
- 28

29 SEC. 5. *Exclusions.* – No bank, registered securities market participant, insurance
30 company, or national and/or local government unit may be a debtor under this Act.

31 For purposes of this section:

- 32 1. "Bank" shall refer to any bank or quasi-bank that is potentially or actually
33 subject to conservatorship, receivership, or liquidation proceedings under the
34 New Central Bank Act or successor legislation.
- 35 2. "Insurance company" shall refer to any insurance company that is subject to
36 insolvency proceedings under the Insurance Code (PD 1460) or successor
37 legislation.
- 38 3. "Registered securities market participant" shall refer to a registered exchange,
39 broker, dealer, underwriter, transfer agent, or any other juridical person
40 transacting securities that is subject to registration with, and regulation by, the
41 Securities and Exchange Commission pursuant to the Securities Regulation
42 Code and other related laws.
- 43 4. "Cooperatives" whose rehabilitation, liquidation and dissolution are made
44 subject to the Cooperatives Code.
- 45

1 SEC. 6. *Court and Procedural Rules.* – The court or courts for hearing and
2 resolving cases brought under this Act shall be designated by the Supreme Court. The
3 Supreme Court may promulgate rules of practice, pleading, and procedure to clarify or
4 supplement any provision in this Act. It further may substitute for or adopt any provision
5 in this Act that it determines to be procedural in nature: *Provided, however,* That such
6 rules shall not restrict, enlarge, or modify any substantive right established by this Act.

7
8 SEC. 7. *Power of court.* – Upon motion by any party to the proceedings, or *motu*
9 *proprio*, the court may issue any order or judgment that is necessary to carry out the
10 provisions in this Act. Every order issued pursuant to this law or its implementing rules
11 and regulations is immediately executory. An appeal from such order shall not stay the
12 execution thereof unless restrained by the Court of Appeals or the Supreme Court.

13
14 SEC. 8. *Substantive and procedural consolidation.* – Each juridical entity shall be
15 considered as a separate entity under the proceedings in this Act. The assets and
16 liabilities of a debtor may not be commingled or aggregated with those of another under
17 these proceedings unless the other is a related enterprise that is owned or controlled
18 directly or indirectly by the same interests: *Provided, however,* that the commingling or
19 aggregation of assets and liabilities of the debtor with those of a related enterprise may
20 only be allowed where:

- 21 1. there was commingling in fact of assets and liabilities of the debtor and the
22 related enterprise prior to the commencement of the proceedings;
- 23 2. the debtor and the related enterprise have common creditors and it will be
24 more convenient to treat them together rather than separately;
- 25 3. the related enterprise voluntarily accedes to join the debtor as party petitioner
26 and to commingle its assets and liabilities with the debtor's; and
- 27 4. the consolidation of assets and liabilities of the debtor and the related
28 enterprise is beneficial to all concerned and promotes the objectives of
29 rehabilitation.

30 *Provided, finally,* that nothing in this Section shall prevent the court from joining
31 other entities affiliated with the debtor as parties pursuant to the Rules of Court.

32
33 SEC. 9. *Required service on parties.* – Pleadings and any other paper filed with the
34 court shall be deemed served on the creditors if delivered to the rehabilitation receiver or
35 liquidator that is appointed pursuant to this Act. Service upon stakeholders shall be
36 deemed complete if received by the official authorized to accept service for the debtor.
37 Service upon employees shall be deemed complete if received by an authorized
38 representative of the union or a designated representative of the employees, and by
39 posting a notice of such service in bold letters at a conspicuous place in the premises of
40 the business establishment: *Provided, however,* That pleadings concerning property of the
41 debtor shall additionally be served on each party having an ownership interest in or lien
42 against the property that is the subject of the dispute: *Provided, further,* That a pleading
43 concerning a particular claim against the debtor shall be served on each party to the
44 claim.

1 Appropriate requirements for distribution of documents in electronic form or
2 otherwise to the parties to the proceedings through the rehabilitation receiver or liquidator
3 shall be established through procedural rules.
4

5 SEC. 10. *Collective decision-making of creditors.* – Unless specifically stated
6 otherwise in this Act, any provision in this Act that refers to approval, rejection, or other
7 collective action by the creditors (or to a class or sub-group of a class thereof) shall refer
8 to the results of a process by which more than half of the creditors (or a class or a sub-
9 group of a class thereof) have manifested such a decision either through affidavits or the
10 signed minutes of a meeting. The votes of the creditors for such decisions shall be
11 calculated solely according to amount of claim as valued as of the commencement date
12 unless specifically stated otherwise in this Act.
13

14 SEC. 11. *Decisions of creditors.* Decisions of creditors shall be made according to
15 the relevant provisions of the Corporation Code in the case of stock or non-stock
16 corporations or the Civil Code in the case of partnerships that are not inconsistent with
17 this Act.
18

19 SEC. 12. *Creditors' representatives.* – Creditors may designate representatives to
20 vote or otherwise act on their behalf by filing notice of such representation with the court
21 and serving a copy on the rehabilitation receiver or liquidator.
22

23 SEC. 13. *Liability of directors and officers.* – Directors and officers of a debtor shall
24 be liable for double the value of the property sold, embezzled or disposed of or double
25 the amount of the transaction involved, whichever is higher, to be recovered for the
26 benefit of the debtor and the creditors under the following circumstances:

- 27 1) if the officer or director, having notice of the commencement of the proceedings,
28 or having reason to believe that proceedings are about to be commenced, disposes
29 or causes to be disposed of any property of the debtor or authorizes or approves
30 any transactions fraudulently or in a manner grossly disadvantageous to the debtor
31 and/or creditors; or
32 2) if such director or officer conceals from the creditors or embezzles or
33 misappropriates any of such property.
34

35 The court shall determine the extent of the liability of a director or an officer
36 under this Section. In this connection, the court shall consider the amount of the
37 shareholding or equity interest of such director or officer, the degree of control of such
38 director or officer over the debtor, and the extent of the involvement of such director or
39 debtor in the actual management of the operations of the debtor.
40

41 SEC. 14. *Authorization to exchange debt for equity.* – Notwithstanding applicable
42 banking legislation, any bank, whether universal or not, may acquire and hold an equity
43 interest or investment in a debtor or its subsidiaries when conveyed to such bank in
44 satisfaction of debts pursuant to a rehabilitation or liquidation plan approved by the court:
45 *Provided*, That such ownership shall be subject to the ownership limits applicable to
46 universal banks for equity investments and: *Provided further*, That any equity investment

1 or interest acquired or held pursuant to this Section shall be disposed by the bank within a
2 period of five (5) years or as may be prescribed by the Monetary Board.
3

4 **CHAPTER II --- INITIATION OF PROCEEDINGS**

5 **Sub-Chapter 2. Voluntary Proceedings**

6 SEC. 15. *Petition to initiate voluntary proceedings.* – A debtor may initiate
7 voluntary proceedings under this Act by filing a petition with the court and on the
8 grounds hereinafter specifically Provided. In order to establish an entitlement to relief
9 under this Act, the debtor's petition shall:

- 10 1. identify the debtor, its principal activities, and its addresses;
- 11 2. state the fact of and the cause of the debtor's insolvency or inability to pay its
- 12 obligations as they become due;
- 13 3. specifically state the relief sought pursuant to Chapter IV of this Act;
- 14 4. state the grounds upon which the petition is based;
- 15 5. include other information that may be required under this Act depending on
- 16 the form of relief requested; and
- 17 6. include the attachments required by this Act and rules promulgated
- 18 thereunder.
- 19

20 SEC. 16. *Attachments to the petition.* – The documents required to be filed with the
21 petition shall be established by procedural rules which shall include as a minimum an
22 inventory of assets and schedule of debts and liabilities.
23

24 SEC. 17. *Commencement of proceedings.* – Proceedings shall commence upon the
25 court's issuance of an order finding the petition and attachments to be sufficient in form
26 and substance. Such an order, which must be issued no later than five (05) working days
27 after the filing of the petition, shall include the elements set forth in section 22 of this
28 Act. If the court finds the petition not fully sufficient in form and substance, it may, in its
29 sole discretion, require the petitioner to file within a reasonable time such documents as
30 may be necessary to put the petition in proper order. In such case the five (05) working
31 days Provided above for the issuance of the commencement order shall be reckoned from
32 the date such requirement is satisfied.
33

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

35 SEC. 18. *Circumstances necessary to initiate involuntary proceedings.* – Any three
36 creditors with total claims equivalent to either one million pesos (₱1,000,000.00), or
37 twenty-five percent (25%) of the total paid-up capital or partners' contributions,
38 whichever is higher, shall be entitled to initiate involuntary proceedings against a debtor
39 if:

- 40 1. there are no genuine disputes of facts or law on their claims and the required
- 41 payments have not been made for more than sixty (60) days; or
- 42 2. a creditor other than the petitioners has initiated foreclosure proceedings
- 43 against the debtor that will prevent the debtor from paying its debts as they
- 44 come due or will render it insolvent.

1
2 SEC. 19. *Petition to initiate involuntary proceedings.* --In order to establish an
3 entitlement to relief under this Act, the creditors' petition shall:

- 4 1. identify the debtor, its principal activities, and its address;
- 5 2. state the circumstances sufficient to support a petition to initiate involuntary
- 6 proceedings under section 18 of this Act;
- 7 3. specifically state the relief sought under Chapter IV of this Act;
- 8 4. include other information that may be required under this Act depending on
- 9 the form of relief requested; and
- 10 5. include the attachments required by this act and the rules promulgated
- 11 thereunder.
- 12

13 SEC. 20. *Preliminary proceedings on the sufficiency of a petition.* - The
14 documents required to be filed with the petition and The procedures for service of
15 summons on the debtor as a respondent, preliminary remedies, responsive pleadings, and
16 determination of the existence of a viable cause of action under this Sub-Chapter shall be
17 governed by the rules of procedure established by the Supreme Court.
18

19 SEC. 21. *Basis for commencement of involuntary proceedings.* - The court shall
20 order the commencement of involuntary proceedings upon determining that the debtor is
21 or will be unable to meet its debts as they come due or has or will imminently become
22 insolvent. Upon establishment of the condition in sub-section (1) of Section 18 of this
23 Act, there shall be a disputable presumption that the debtor cannot meet its debts as they
24 come due. The order containing the court's finding shall also include the elements set
25 forth in Section 22 of this Act.
26

27 CHAPTER III --- ADMINISTRATION OF THE PROCEEDINGS

28 Sub-Chapter 4. The Debtor Under Proceedings

29 SEC. 22. *Issuance of a commencement order.* - If the court finds the petition to be
30 sufficient in form and substance, it shall issue a commencement order which shall

- 31 1. identify the debtor, its principal activities, and its address;
- 32 2. state the grounds for initiating the proceedings;
- 33 3. state the relief sought under this act and any requirement or procedure
- 34 particular to the relief sought;
- 35 4. state the legal effects of the commencement of proceedings, including those
- 36 mentioned in section 24 hereof;
- 37 5. appoint a rehabilitation receiver, or liquidator when appropriate who shall
- 38 exercise such powers and duties defined in this act as well as the procedural
- 39 rules that the Supreme Court will promulgate;
- 40 6. summarize the requirements and deadlines for creditors to establish their
- 41 claims against the debtor;
- 42 7. direct the bureau of internal revenue to file and serve on the debtor its
- 43 comment on or opposition to the petition or its claim/s against the debtor
- 44 under such procedures as the Supreme Court may hereafter provide.

8. indicate the location or locations at which documents regarding the debtor and the proceedings under this act may be reviewed and copied; and
9. set the case for an initial hearing within a period of not more than sixty (60) 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.

SEC. 23. *Duration of commencement order.* The commencement order, which shall be published once a week for two (02) consecutive weeks in a newspaper of general circulation in the Philippines, beginning not later than seven (07) days after the issuance of the commencement order, shall be effective for an initial period of ninety (90) days from the date of filing of the petition, extendible for a maximum period of sixty (60) days for meritorious reasons. It shall automatically be dissolved without need of court action upon the expiration of said initial period or extended period, as the case may be, unless the court gives due course to the petition within said period on a finding that there is substantial likelihood for the debtor to be rehabilitated. If the court does not give due course to the petition, it shall order the dismissal of the petition or the conversion of the proceedings to dissolution and liquidation proceedings under Sub-Chapter 4 of Chapter IV of this act.

For purposes hereof, there is substantial likelihood for the debtor to be rehabilitated if the following minimum requirements are met:

1. the proposed rehabilitation plan submitted complies with the minimum contents prescribed by this act;
2. there is sufficient monitoring by the rehabilitation receiver of the debtor's business for the protection of creditors;
3. the debtor has met with its creditors to the extent reasonably possible in attempts to reach a consensus on the proposed rehabilitation plan;
4. there are sufficient assets with which to rehabilitate the debtor;
5. the rehabilitation receiver submits a report that, based on the preliminary evaluation:
 - a. there is sufficient cash flow to maintain the operations of the debtor;
 - b. the debtors' stockholders, directors and officers have been acting in good faith and with due diligence;
 - c. the petition is not a sham filing intended only to delay the enforcement of creditors' rights; and
 - d. the debtor would likely be able to pursue a viable rehabilitation plan.

SEC. 24. *Effect of commencement of proceedings.* – Unless otherwise Provided for in this Act, the court's issuance of a commencement order shall:

1. 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;

2. suspend all legal and other proceedings for the enforcement of claims of whatever nature and kind against the debtor subject to the provisions of sections 26 and 27 hereof;
3. prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business;
4. prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date, except upon the approval of the court upon motion duly filed for the purpose;
5. suspend all actions to enforce any judgment against the debtor;
6. prohibit, or otherwise serve as the legal basis for rendering null and void the results of, any extra-judicial 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 29 hereof;
7. serve as the legal basis for rendering null and void any setoff after the commencement date of any debt owed to the debtor by any of the debtor's creditors;
8. 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
9. 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.

The court may order, through its injunctive and contempt powers, the transfer of documents, return of property, the annotation of titles and other relevant documents, or provide for other appropriate relief to address any violation of this Section or to protect the interests of creditors and stakeholders.

Individuals, including the debtor's management and directors, who refuse to accede to requests for documents or property described in this Section shall be liable for indirect contempt of court and criminal penalties, as well as all resulting costs and attorneys' fees.

SEC. 25. *Exceptions to section 24.* – The provisions of section 24 of this Act shall not apply 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.

SEC. 26. *Non-applicability of suspension order to appeals and specialized proceedings.* – The suspension order shall not apply to appeals cases filed at the Court of Appeals or the Supreme Court prior to the commencement date: *Provided,* That the

1 execution of any judgment resulting from such appeal shall be referred to the court
2 presiding over the rehabilitation proceedings for appropriate action.

3
4 The court may exclude from its suspension order cases pending or filed at a
5 specialized court or quasi-judicial agency when it determines that such court or agency is
6 capable of resolving the claim more quickly, fairly, and efficiently than the court:
7 *Provided*, That the execution of any judgment of such court or agency shall be referred to
8 the court and shall be treated as a non-disputed claim.

9
10 SEC. 27. *Non-applicability of suspension order on solidary guarantees and third*
11 *party or accommodation mortgages.* – The suspension order shall not suspend the
12 enforcement of claims against solidary guarantors and third party or accommodation
13 mortgagors unless the property subject of the third party or accommodation mortgage is
14 necessary for the rehabilitation of the debtor as determined by the court upon
15 recommendation by the rehabilitation receiver.

16
17 SEC. 28. *Application of suspension to government financial institutions.* – The
18 provisions in Section 24 of this Act concerning the suspension of rights to foreclose or
19 otherwise pursue legal remedies shall apply to government financial institutions,
20 notwithstanding provisions in their charters or other laws to the contrary.

21
22 SEC. 29. *Property of the debtor under the possession, control or management of*
23 *third parties.* – In the case of possessory pledges, mechanic's liens or similar claims,
24 third parties possessing, controlling or managing the property of the debtor may not sell
25 or otherwise convey it to persons other than the debtor, unless otherwise instructed by the
26 rehabilitation receiver. The rehabilitation receiver may also:

- 27 1. cause the transfer of possession, control or management of such property to
28 the rehabilitation receiver or any other person, subject to payment of the
29 claims secured by such possessory liens;
- 30 2. allow the third parties to continue to possess, control or manage the property if
31 such an arrangement would more likely preserve or increase the value of the
32 property in question or the total value of the assets held by the debtor; or
- 33 3. undertake any other disposition of the property as may be beneficial for the
34 rehabilitation of the debtor.

35
36 SEC. 30. *Rescission of transfers or encumbrances of unencumbered property after*
37 *the commencement of proceedings.* – The court may rescind any transfer or encumbering
38 of the debtor's unencumbered property that occurs after the commencement of the
39 proceedings and is outside the ordinary course of business: *Provided, however*, That the
40 unencumbered property may be sold, encumbered or otherwise disposed of, upon order of
41 the court after notice and hearing:

- 42 1. if such are in the interest of administering the debtor and facilitating the
43 preparation and implementation of a rehabilitation plan;
- 44 2. in order to provide a substitute lien, mortgage or pledge of property under this
45 +act;
- 46 3. for payments made to meet administrative expenses as they arise;

4. for payments to victims of quasi-delicts upon a showing that the claim is valid and the debtor has insurance to reimburse the debtor (it) for the payments made;
5. for payments made to repurchase property of the debtor that is auctioned off in a judicial or extra-judicial sale under this act; or
6. for payments made to reclaim property of the debtor held pursuant to a possessory lien.

SEC. 31. *Sale or disposal of encumbered property.* The debtor may sell or dispose of encumbered property owned by 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 the court, after notice and hearing, determines that:

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

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

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

SEC. 32. *Treatment of rapidly depreciating property.* – Upon the application of a party holding a lien against or ownership interest in property held by the debtor that is subject to potentially rapid depreciation, 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:

1. allow the encumbered property to be foreclosed by the secured party according to the arrangement between the debtor and the secured party, applicable rules of court and relevant legislation;
2. order the conveyance of a lien against or ownership interest in substitute property of the debtor if such is acceptable to the creditor or interest owner and is not opposed by any of the creditors who are secured by pre-existing liens on such property; or, if such property is not available;
3. order the conveyance to the secured party or holder of an ownership interest a lien on the residual funds from the sale of encumbered property during the proceedings; or
4. allow the sale or disposition of property, *Provided*, the sale or disposition will maximize the value of the property for the benefit of the lienholder and the debtor.

1 SEC. 33. *Lack of adequate protection.* The court, on motion or *motu proprio*, may
2 terminate, modify or set conditions for the continuance of suspension of payment, or
3 relieve a claim from the coverage thereof, upon showing that a creditor does not have
4 adequate protection over property securing its claim, or the debtor's secured obligation is
5 more than the fair market value of the property subject to stay, and such property is not
6 necessary for the rehabilitation of the debtor.

7
8 For purposes of this section, the creditor shall lack adequate protection if it can be
9 shown that:

- 10 1. the debtor fails or refuses to honor a pre-existing agreement with the creditor
11 to keep the property insured;
- 12 2. the debtor fails or refuses to take commercially reasonable steps to maintain
13 the property; or
- 14 3. the property has depreciated to an extent that the creditor is undersecured.

15
16 Upon showing of a lack of protection, the court shall order the debtor or the
17 rehabilitation receiver to make arrangements to provide for the insurance or maintenance
18 of the property; or to make payments or otherwise provide additional or replacement
19 security such that the obligation is fully secured. If such arrangements are not feasible,
20 the court may modify the stay order to allow the secured creditor lacking adequate
21 protection to enforce its security claim against the debtor; *Provided however*, that the
22 court may deny the creditor the remedies in this paragraph if the property subject of the
23 enforcement is required for the rehabilitation of the debtor.

24
25 SEC. 34. *Rescission of pre-commencement transactions.* – The court may rescind
26 transactions that have occurred prior to the commencement date on the ground that they
27 were executed with intent to defraud creditors. Circumstances on which there shall arise
28 a disputable presumption of such intent or design shall be established by procedural rules:
29 *Provided, however*, That nothing in this Section or procedural rules promulgated
30 thereunder shall prohibit the court from rescinding a transaction on other grounds
31 *Provided by relevant legislation and jurisprudence: Provided further*, That the provisions
32 of the Civil Code on rescission shall in any case apply to these transactions.

33
34 SEC. 35. *Post-commencement interest.* – The rate and term of interest, if any, on
35 secured and unsecured claims shall be determined and *Provided for* in the approved
36 rehabilitation plan.

37
38 SEC. 36. *Post-commencement loans.* – With the approval of the court upon the
39 recommendation of the rehabilitation receiver, the debtor, in order to enhance its
40 rehabilitation, may:

- 41 1. enter into credit arrangements, the payments under which shall be considered
42 an administrative expense; or
- 43 2. enter into credit arrangements, secured by mortgages of its unencumbered
44 property or secondary mortgages of encumbered property with the approval of
45 senior secured parties with regard to the encumbered property.

1 SEC. 37. *Treatment of employees' claims.* – Compensation of employees required to
2 carry on the business shall be considered an administrative expense. Claims of separation
3 pay for months worked prior to the commencement date shall be considered a pre-
4 commencement claim. Claims for salary and separation pay for work performed after the
5 commencement date shall be an administrative expense.

6
7 SEC. 38. *Treatment of counter-parties in contract.* – Unless specifically cancelled
8 by a court judgment prior to issuance of the order commencing proceedings, or at
9 anytime thereafter by the court before which the proceedings are pending, all contracts of
10 the debtor with creditors and other third parties shall be deemed to continue in force,
11 regardless of pre-commencement defaults by the debtor: *Provided*, That within ninety
12 (90) days following the commencement of the proceedings, the debtor, with the consent
13 of the rehabilitation receiver, shall notify each contractual counter-party of whether it is
14 confirming the particular contract. Contractual obligations of the debtor arising during
15 this period, and afterwards for confirmed contracts, shall be an administrative expense.
16 Contracts not confirmed by the required deadline shall be considered terminated. Claims
17 for actual damages, if any, arising as a result of the election to terminate a contract shall
18 be considered a pre-commencement claim against the debtor.

19
20
21 **Sub-Chapter 5. Submission and Determination of Claims**

22 SEC. 39. *Determination of tax liabilities.* – The rehabilitation receiver shall take all
23 necessary steps to obtain a determination of the tax liabilities of the debtor as of the
24 commencement of the proceedings.

25
26 SEC. 40. *Establishment of valid and disputed claims against the debtor.* – In order
27 to maintain its status, a creditor, unless exempted by procedural rules, shall be required to
28 submit evidence of its claim against the debtor within forty-five (45) days from the final
29 publication of the commencement order. The process by which the receiver shall
30 determine the validity, amount and class or classes of each claim shall be established by
31 procedural rules. Such rules shall reasonably ensure the recognition of valid claims
32 against the debtor as of the commencement of the proceedings. Failure to submit, in a
33 timely manner, evidence of a claim pursuant to this section and rules promulgated
34 thereunder may result in the subordination of the claim in relation to the other claims the
35 evidence of which were filed within the prescribed period; *Provided*: that claims included
36 in the list of creditors submitted by the debtor will not be subordinated but considered
37 filed on time.

38
39 **Sub-Chapter 6. The Rehabilitation Receiver, The Management**
40 **Committee And The Creditors' Committee**

41
42 SEC. 41. *Who may serve as a rehabilitation receiver.* – Any qualified
43 individual may serve as a rehabilitation receiver. A group of individuals who together
44 are qualified, or a juridical entity with employees who together are qualified may serve as
45 a rehabilitation receivership committee or as a rehabilitation receiver, respectively. The

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

4
5 SEC. 42. *Initial Appointment of a rehabilitation receiver.* – The
6 rehabilitation receiver shall be appointed by the Court when relief is requested under
7 Sub-Chapters 1, 2, or 3 of Chapter IV of this Act; Provided that if a qualified individual
8 or entity is nominated by more than fifty percent (50%) of the secured creditors and the
9 general unsecured creditors, and if evidence is submitted to the satisfaction of the court,
10 the court shall appoint the creditors' nominee as rehabilitation receiver.

11
12 SEC. 43. *Role of the rehabilitation receiver.* – The rehabilitation receiver is
13 primarily tasked to ensure that the value of the debtor's properties is reasonably
14 maintained during the proceedings. The rehabilitation receiver shall closely oversee and
15 monitor the operations of the debtor as well as take custody and control of all assets and
16 properties of the debtor. He shall have the power to demand and obtain all the relevant
17 information regarding the debtor; to evaluate the assets, liabilities, earnings and
18 operations of the debtor; to determine the best way to salvage and protect the interest of
19 all stakeholders; to sue and recover the assets of the debtor; to facilitate the resolution of
20 the various rights of the different stakeholders; to study, review and evaluate the
21 feasibility of continuing operations; and to cause the implementation of the rehabilitation
22 plan upon its approval.

23
24 The rehabilitation receiver shall not take over the management and control of the
25 debtor but may recommend the appointment of a management committee over the debtor
26 in the cases Provided by this act.

27
28 The rehabilitation receiver, who shall be considered as an officer of the court, shall
29 exercise the powers and duties conferred in this act in accordance with the procedural
30 rules.

31
32 SEC. 44. *Removal of a rehabilitation receiver.* – The rehabilitation receiver
33 may, on motion, be removed by the court on such grounds as the rules of procedures may
34 provide which shall include but are not limited to the following:

- 35 1. incompetence, gross negligence, failure to perform or failure to exercise the
36 proper degree of care in the performance of his duties and powers;
- 37 2. lack of a particular or specialized competency required by the specific case;
- 38 3. illegal acts or conduct in the performance of his duties and powers;
- 39 4. lack of qualification or presence of any disqualification;
- 40 5. conflict of interest that arises after his appointment; and
- 41 6. manifest lack of independence that is detrimental to the general body of the
42 stakeholders.

43
44 SEC. 45. *Compensation and terms of service.* – The rehabilitation receiver
45 and his direct employees or independent contractors shall be entitled to compensation for
46 reasonable fees and expenses from the debtor according to the terms approved by the

1 court after notice and hearing. Prior to such hearing, the rehabilitation receiver and his
2 direct employees shall be entitled to reasonable compensation based on *quantum meruit*.
3 Such costs shall be considered administrative expenses.

4
5 SEC. 46. *Management Committee.* – As an incident to any of the cases under
6 this act, the court may, upon motion of any stakeholder, appoint a management
7 committee that will undertake the management of the debtor, upon clear and convincing
8 evidence of any of the following circumstances:

- 9 1. actual or imminent danger of dissipation, loss, wastage or destruction of the
10 debtor's assets or other properties;
11 2. paralyzation of the business operations of the debtor;
12 3. gross mismanagement of the debtor; or
13 4. gross or willful violation by management of this act.

14
15 SEC. 47. *Role of the Management Committee.* – The management
16 committee shall take the place of the management and the governing body of the debtor
17 and assume their rights and responsibilities.

18
19 The specific powers and duties of the management committee, whose members
20 shall be considered as officers of the court, shall be prescribed by the procedural rules.

21
22 SEC. 48. *Qualifications of members of the management committee.* – The
23 qualifications and disqualifications of the members of the management committee shall
24 be set forth in the procedural rules taking into consideration the nature of the business of
25 the debtor and the need to protect the interest of all stakeholders concerned.

26
27 SEC. 49. *Employment of professionals.* – Upon approval of the court, and
28 after notice and hearing the rehabilitation receiver or management committee may
29 employ specialized professionals and other experts to assist each in the performance of
30 their duties. Such professionals and other experts shall be considered either employees or
31 independent contractors of the rehabilitation receiver or management committee, as the
32 case may be. The qualifications and disqualifications of the professionals and experts
33 may be set forth in procedural rules taking into consideration the nature of the business of
34 the debtor and the need to protect the interest of all stakeholders concerned.

35
36 SEC. 50. *Conflicts of interest.* – No person may be appointed as a
37 rehabilitation receiver, member of a management committee, or be employed by the
38 rehabilitation receiver or the management committee if he has a conflict of interest.

39
40 A person shall be deemed to have a conflict of interest if he is so situated as to be
41 materially influenced in the exercise of his judgment for or against any party to the
42 proceedings.

43
44 Any rehabilitation receiver, member of the management committee or persons
45 employed or contracted by them possessing any conflict of interest shall disclose it to the
46 court. Any party to the proceeding adversely affected by the appointment of any person

1 with a conflict of interest to any of the positions enumerated above may however waive
2 his right to object to such appointment, and if the waiver is unreasonably withheld, the
3 court may disregard the conflict of interest taking into account the general interest of the
4 stakeholders.

5
6 SEC. 51. *Immunity.* – The rehabilitation receiver and all persons employed
7 by him, and the members of the management committee and all persons employed by it
8 shall not be subject to any action, claim or demand in connection with any act done or
9 omitted to be done by them in good faith in connection with the exercise of their powers
10 and functions under this act or other actions duly approved by the court.

11
12 SEC. 52. *Creditors' committee.* – After the creditors' meeting called
13 pursuant to section 57, the creditors belonging to a class may formally organize a
14 committee among themselves. In addition, the creditors may as a body, agree to form a
15 creditors' committee composed of a representative from each class of creditors, such as
16 the following:

- 17 a) secured creditors;
18 b) unsecured creditors;
19 c) trade creditors and suppliers; and
20 d) employees of the debtor.

21
22 In the election of the creditors' representatives, the rehabilitation receiver or his
23 representative shall attend such meeting and extend the appropriate assistance as may be
24 defined in the procedural rules.

25
26 SEC. 53. *Role of creditors' committee.* – The creditors' committees when
27 constituted pursuant to section 52 shall assist the rehabilitation receiver in
28 communicating with the creditors and shall be the primary liaison between the
29 rehabilitation receiver and the creditors. The creditors' committees cannot exercise or
30 waive any right or give any consent on behalf of any creditor unless specifically
31 authorized in writing by such creditor. The creditors' committees may be authorized by
32 the court or by the rehabilitation receiver to perform such other tasks and functions as
33 may be defined by the procedural rules in order to facilitate the rehabilitation process.

34 35 36 **Sub-Chapter 4. Termination of Proceedings**

37
38 SEC. 54. *Termination of proceedings.* The rehabilitation proceedings under
39 Sub-Chapters 1 and 2 of Chapter IV shall, upon motion by any stakeholder or the
40 rehabilitation receiver, be terminated by order of the court either declaring a successful
41 implementation of the rehabilitation plan or a failure of rehabilitation. There is failure of
42 rehabilitation in the following cases:

- 43 1. dismissal of the petition by the court;
44 2. the debtor fails to submit a rehabilitation plan;

3. under the rehabilitation plan submitted by the debtor, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period;
4. 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;
5. the commission of fraud in securing the approval of the rehabilitation plan or its amendment; and
6. other analogous circumstances as may be defined by the rules of procedure.

SEC. 55. *Effects of Termination.* – Termination of the proceedings shall result in the following:

1. the discharge of the rehabilitation receiver;
2. 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;
3. reinstate the debtor to the status of a corporation which is operating in the normal course of business and not undergoing rehabilitation proceedings.

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 78 (2).

CHAPTER IV --- REMEDIES

Sub-Chapter 1. Court-Supervised Rehabilitation

SEC. 56. *Order commencing or converting proceedings.* – An order commencing proceedings or converting them to relief under this Sub-Chapter shall:

1. establish the date for the initial meeting of creditors;
2. establish the deadline date for submission of a plan; and
3. have appended to it the debtor's submitted schedule of activities for preparing the rehabilitation plan.

An order commencing involuntary proceedings or converting proceedings to those under this Sub-Chapter shall require the debtor to deliver the documents enumerated in Section 15 of this Act and rules promulgated thereunder to the rehabilitation receiver within thirty (30) days of its issuance.

The rehabilitation receiver shall provide notice to parties of a conversion order in a manner similar to that for an order commencing proceedings.

1 SEC. 57. *Initial meeting of debtor and creditors.* – Within forty-five (45)
2 days of the commencement date or the date of conversion (whichever is later), the
3 rehabilitation receiver shall hold a meeting of creditors, the time and place of which shall
4 be established in the order. The debtor shall be required to send to the meeting an officer
5 (or officers) knowledgeable of its affairs to answer the creditors' questions under oath.

6
7 SEC. 58. *Methods of rehabilitation.* – Any lawful actions that establish a
8 means of meeting the obligations of the debtor as adjusted by a rehabilitation plan may be
9 utilized under this Act. Particular methods of rehabilitation may be set forth in procedural
10 rules.

11
12 SEC. 59. *Preparation of a rehabilitation plan.* – In proceedings under this
13 Sub-Chapter that are commenced voluntarily or have been converted from other
14 proceedings, the debtor, through its board of directors, shall prepare a plan for submission
15 to the rehabilitation receiver and the court for final review and approval by no later than
16 one hundred and twenty (120) days after the commencement date or the date of
17 conversion (whichever is later).

18
19 In proceedings under this Sub-Chapter that are commenced involuntarily, the
20 creditors submitting the petition shall prepare a plan for submission to the rehabilitation
21 receiver and the court for final review and approval by no later than one hundred and fifty
22 (150) days after the commencement date.

23
24 The parties charged with preparing a plan under this Section may hire an
25 individual or group of financial and legal experts to act as a rehabilitation planner. In
26 proceedings under this Sub-Chapter that are commenced involuntarily, the rehabilitation
27 receiver may also serve as the rehabilitation planner.

28
29 The compensation of a rehabilitation planner shall be considered an
30 administrative expense subject to approval by the court on a monthly basis.

31
32 SEC. 60. *Effect of failure to submit plan within the required period.* – The
33 court shall convert the proceedings to dissolution and liquidation proceedings under this
34 Chapter if a plan as described in Section 61 of this Act is not submitted to the court for
35 final review and approval within the time period described in Section 59 of this Act:
36 *Provided*, That the court may allow an extension of time if approved by a decision of the
37 secured creditors and the general unsecured creditors' committee.

38
39 SEC. 61. *Minimal contents of a plan.* – In order to be approved by the court,
40 the plan shall:

- 41 1. contain information sufficient to give the various classes of creditors and
42 stockholders a reasonable basis for determining whether supporting the plan is
43 in their financial interest when compared to the liquidation of the debtor;
- 44 2. establish classes of voting creditors as described in Section 62 of this Act;
- 45 3. establish sub-classes of voting creditors if prior approval has been granted by
46 the court;

4. specify the treatment of each class or sub-class described in sub-sections (1) and (2);
5. provide for equal treatment of all unpaid claims within a class or sub-class unless the particular creditor voluntarily agrees to less favorable treatment;
6. maintain the security interest of secured creditors unless such has been waived or modified voluntarily;
7. disclose all payments to creditors for pre-commencement debts made during the proceedings and the justifications thereof;
8. describe the claims against the debtor still subject to dispute and the provisioning of funds to account for appropriate payments should the claim be ruled valid or its amount adjusted;
9. require the debtor and its counter-parties to adhere to the terms of all contracts that the debtor has chosen to confirm;
10. 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;
11. arrange for the payment of all outstanding taxes and assessments, or an adjusted amount pursuant to a compromise settlement with the Bureau of Internal Revenue or other applicable tax authorities;
12. include a certified copy of a certificate of tax clearance or evidence of a compromise settlement with the Bureau of Internal Revenue;
13. 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;
14. state any rehabilitation covenants of the debtor, the breach of which shall be consider a material breach of the plan;
15. state the compensation and status, if any, of the rehabilitation receiver after the approval of the plan;
16. include a legal opinion of the lawyer of the rehabilitation planner certifying that the transactions and arrangements of the plan are consistent with the law; and
17. include written evidence of consent to the plan by each class or sub-class of voting creditors established by the plan or written evidence of consent to the plan by eighty percent (80%) of all of the voting creditors.

SEC. 62. *Voting creditors.* – Unless otherwise Provided for in this Act, approval of the plan by the court shall be dependent on the approval beforehand by each of the following classes of creditors:

1. the secured creditors;
2. the unsecured creditors described in sub-section (2) of Section 87 (creditors with claims for compensation relating to employment);
3. the unsecured creditors described in sub-section (4) of Section 87 (general unsecured creditors); and
4. the unsecured creditors described in sub-section (5) of Section 87 (creditors with claims that have been subordinated).

1 A class of voting creditors may be divided into sub-classes if the court, prior to the
2 formal submission of the plan, finds by clear and convincing evidence, that such sub-
3 division is justified by clear and substantial differences among the economic interests of
4 the creditors within a particular class.

5
6 SEC. 63. *Consultation with creditors and stockholders.* – At any time before
7 submission of the plan to the court for final review and approval, the debtor and/or
8 rehabilitation planner may meet with the parties to discuss the plan with a view to
9 clarifying or resolving any matter connected therewith. The planner may modify the plan
10 in light of the comments of such parties.

11
12 In all cases where the vote of the stockholders of the debtor is necessary for the
13 implementation of the plan, the total claims of the debtor's employees and other
14 unsecured creditors as acknowledged by the rehabilitation receiver shall be considered as
15 part of the subscribed capitalization and added thereto and the debtor's employees and
16 the other unsecured creditors shall be allowed to vote with the stockholders of the debtor
17 to the extent of their respective claims, which shall be converted for this purpose only to
18 their equivalent share holdings based on the par value of the debtor's share. The privilege
19 extended to employees and other unsecured creditors under this section is only for voting
20 purposes when necessary for the implementation of the rehabilitation plan, and shall in no
21 way make such employees and unsecured creditors as stockholders of the debtor.

22
23 SEC. 64. *Submission of plan for final review and approval.* – The plan shall
24 be submitted to the rehabilitation receiver and court no later than the date established in
25 the order commencing or converting proceedings under this Sub-Chapter. Upon receipt,
26 the rehabilitation receiver shall:

- 27 1. make copies of the plan available to interested persons for review and
- 28 copying;
- 29 2. within five days of receipt, notify each party to the proceedings that the plan is
- 30 available; and
- 31 3. provide publication notice of such availability.

32
33 Such notice shall inform the parties that they have the right to file an objection to the
34 plan in accordance with this Sub-Chapter.

35
36 SEC. 65. *Minimal standards for approval.* – The court shall approve a plan
37 only if the following requirements are met:

- 38 1. the plan conforms to the requirements of Section 61 of this Act;
- 39 2. the plan has been disclosed to creditors and stockholders according to the
- 40 provisions in Section 63 of this Act; and
- 41 3. the plan is supported (a) by the majority of each class or sub-class of voting
- 42 creditors established in the plan, or (b) eighty percent (80%) of all of the
- 43 voting creditors.

44
45 SEC. 66. *Submission of objections.* – Any creditor or stockholder, within
46 thirty (30) days from the second date of publication notice of the filing of the plan and its

1 availability, may submit to the court an objection to the plan. Objections to a
2 rehabilitation plan shall be limited to the following:

- 3 1. the plan fails to meet the minimal standards of a plan described in this Sub-
4 Chapter or otherwise fails to include the information or attachments required
5 thereby;
- 6 2. the documents filed by the debtor are materially false or misleading;
- 7 3. the plan fails to accurately account for a claim against the debtor;
- 8 4. the plan is in fact not supported by the voting creditors; or
- 9 5. the creditors' support was induced by fraud.

10
11 Copies of any objection to the plan shall be served on the debtor, the rehabilitation
12 receiver and the largest seven (7) secured creditors and largest seven (7) general
13 unsecured creditors who support the plan. Within five days of receipt, the rehabilitation
14 receiver shall make available copies of the objection to the remaining parties to the
15 proceedings.

16
17 SEC. 67. *Hearing on objection.* – If objections have been submitted during
18 the relevant period, the court shall issue an order setting the time and date of the hearing
19 or hearings on the objections and shall provide a copy of the order to the rehabilitation
20 receiver. The rehabilitation receiver shall within five (5) days of receipt, deliver a copy
21 of the hearing order to each party to the proceedings and provide publication notice of the
22 hearing.

23
24 If the court finds the objection valid, it shall order, when possible, the debtor to
25 cure the petition or plan within a reasonable period. If the court determines that the
26 debtor acted in bad faith, or that the bases for objection are non-curable, the court shall
27 order the conversion of these proceedings to those under Sub-Chapter 4 of this Chapter.

28
29 SEC. 68. *Approval of the plan.* – If the court receives no objections to the
30 plan or finds them lacking in merit, or determines that the debtor has complied with an
31 order to cure the objection, it shall issue an order approving the plan in accordance with
32 this Chapter.

33
34 The court may approve a plan notwithstanding unresolved disputes over claims if the
35 plan has set aside reserves adequate for paying such claims.

36
37 The court shall have a maximum period of eighteen (18) months from the date of
38 filing of the petition to finally approve or disapprove the rehabilitation plan.

39
40 SEC. 69. *Effect of approval.* – Approval of the plan shall discharge the
41 financial payment obligations of the debtor unless otherwise allowed to the extent called
42 for by the plan. Contracts and other arrangements between the debtor and its creditors
43 shall be deemed to continue to apply to the extent that they do not conflict with the
44 payment provisions of the plan. Any compromises on amounts payable by the debtor
45 shall be binding on all creditors regardless of whether the plan is successfully

1 implemented. Claims arising after approval of the plan that are otherwise not treated by
2 the plan are not subject to any suspension order.

3
4 Unless an arrangement otherwise is specifically called for in the rehabilitation
5 plan, the order shall vest full control of the debtor in the debtor's management.

6
7 The order approving the plan shall comply with Rule 36 of the Rules of Court:
8 *Provided, however,* that the court may maintain jurisdiction over the case in order to
9 resolve claims against the debtor that remain contested and allegations that the debtor has
10 breached the plan.

11
12 SEC. 70. *Liability of general partners of a partnership for unpaid balances*
13 *under an approved plan.* – The approval of the plan shall not affect the rights of creditors
14 to pursue actions against the general partners of a partnership to the extent they are liable
15 under relevant legislation for the debts thereof.

16
17 SEC. 71. *Treatment of income derived from forgiveness of debt.* – Income
18 imputed upon the debtor by any indebtedness reduced in connection with a plan's
19 approval shall be considered income earned prior to the commencement date under this
20 Act.

21
22 SEC. 72. *Effect of failure to approve.* – A failure to approve the plan by the
23 court within a maximum period of eighteen (18) months from the date of filing of the
24 petition shall result in a conversion of proceedings under this Sub-Chapter to dissolution
25 and liquidation proceedings under this Chapter.

26
27 SEC. 73. *Discharge of the rehabilitation receiver.* – Upon issuance of
28 approval of the rehabilitation plan, the rehabilitation receiver shall provide a final report
29 and accounting to the court. Unless the plan specifically requires and describes the role
30 of the rehabilitation receiver after the approval of the plan, the court shall discharge the
31 rehabilitation receiver of his duties.

32
33 SEC. 74. *Breach of a plan.* – Upon a failure by the debtor to abide by the
34 rehabilitation covenants of a confirmed plan, any creditor or other affected party may
35 submit to the court a notice of breach of a confirmed plan. The court shall transmit the
36 notice to the debtor and the rehabilitation receiver no later than five days after receipt of
37 the submission, and schedule a hearing on the matter no later than ten days after
38 submission of the notice.

39
40 Upon a finding that a breach of the plan has occurred, the court shall:

- 41 1. issue an order directing that the breach be cured within a specified period of
42 time, failing which the case may be converted to a liquidation;
43 2. issue an order converting the case to a liquidation;
44 3. allow the debtor submit amendments to the plan, the approval of which shall
45 be governed by the requirements for the approval of a plan under this Sub-
46 Chapter; or

- 1 4. issue any other order to remedy the breach consistent with the present
2 regulation, other applicable law, and the best interests of the creditors.
3
4

5 **Sub-Chapter 7. Pre-Negotiated Rehabilitation**

6
7 SEC. 75. *Requirements.* – A debtor may file a petition seeking pre-
8 negotiated rehabilitation as a form of relief. The petition, in addition to the requirements
9 under Sub-Chapter 2 of this Chapter, shall include:

- 10 1. five (5) copies of a rehabilitation plan prepared in accordance with the
11 requirements established in Sub-Chapter 2 of this Chapter;
12 2. a judicial compromise agreement under Title XIV of the Civil Code or other
13 appropriate agreement evidencing consent by creditors sufficient to allow an
14 approval under Sub-Chapter 2 of this Act;
15 3. a summary of disputed claims against the debtor and a report on the
16 provisioning of funds to account for appropriate payments should any such
17 claims be ruled valid or their amounts adjusted; and
18 4. the name of a qualified candidate for rehabilitation receiver, supported by a
19 decision of the secured creditors and general unsecured creditors.
20

21 SEC. 76. *Procedures.* – The procedures for determining that the debtor has
22 in fact obtained sufficient support for approval from the creditors for a pre-negotiated
23 rehabilitation plan prepared in accordance with this Act shall be established by
24 procedural rules: Provided, That the requirements of Sub-Chapter 3 of Chapter III of this
25 Act (determination of claims) shall not apply to proceedings under this Sub-Chapter.
26

27 SEC. 77. *Effect of approval.* – Approval of a plan under this Chapter shall
28 have the same legal effect as approval of a plan under Sub-Chapter 2 of this Chapter.
29
30

31 **Sub-Chapter 8. Dissolution and Liquidation**

32
33 SEC. 78. *Requirements for initiation.* – Dissolution and liquidation proceedings
34 shall commence either:

- 35 1. upon a finding that a petition to initiate either voluntary or involuntary
36 proceedings seeking such relief is sufficient in form and substance; or
37 2. upon issuance of an order converting the proceedings under other forms of
38 relief to those under this Sub-Chapter: *Provided*, That such order shall contain
39 the relevant information required under Section 24 of this Act.
40

41 In cases when a creditor has initiated involuntary proceedings seeking relief under
42 this Sub-Chapter, the court shall convert the proceedings to that under Sub-Chapter 2 of
43 this Chapter upon a motion filed by the debtor within fifteen (15) days of the
44 commencement date.
45

1 SEC. 79. *Appointment of a liquidator.* – The liquidator shall meet the
2 qualifications required of a rehabilitation receiver and shall be similarly free of conflicts
3 of interest. The court shall appoint a liquidator in its order commencing proceedings or
4 converting them to relief under this Sub-Chapter: *Provided, however,* That the court shall
5 appoint as liquidator any qualified individual whose nomination is supported by more
6 than half of the secured creditors and general unsecured creditors, if evidence of such is
7 submitted with the petition: *Provided, further,* That nothing in this Section shall be
8 construed to prevent a rehabilitation receiver who was administering the debtor prior to
9 the commencement of the liquidation portion of the proceedings from being appointed as
10 a liquidator.

11
12 SEC. 80. *Consequences of initiating liquidation proceedings.* – The
13 commencement of liquidation proceedings shall:

- 14 1. either initiate or continue the administration of the debtor in accordance with
15 Chapter III of this Act subject to the particular provisions under this Sub-
16 Chapter;
- 17 2. vest in the liquidator the right to manage and control the debtor and to
18 exercise all rights of the debtor's board of directors, management, and
19 stockholders; and
- 20 3. legally dissolve the debtor, with all contracts and agreements of the debtor not
21 thereafter assigned by the liquidator being deemed breached as of the
22 commencement date under this Sub-Chapter.

23
24 SEC. 81. *Initial meeting of creditors.* – Within thirty (30) days of the
25 commencement date or the date of conversion (whichever is later), the liquidator shall
26 hold a meeting of creditors, the time and place of which shall be established in the order.
27 The liquidator shall inform the creditors as to actions and contemplated actions in
28 providing the relief under this Sub-Chapter.

29
30 SEC. 82. *Specific rights and duties of a liquidator.* – In addition to the rights and
31 duties of a rehabilitation receiver, the liquidator shall have the right and duty to take all
32 reasonable steps to manage and dispose of the debtor's assets with a view towards
33 maximizing the proceedings therefrom, to pay creditors and stockholders, and to
34 terminate the debtor's legal existence. Further duties of the liquidator in accordance with
35 this Section may be established by procedural rules.

36
37 A liquidator shall be subject to removal pursuant to procedures for removing a
38 rehabilitation receiver.

39
40 SEC. 83. *Compensation of the liquidator.* – The liquidator's fees and expenses
41 shall be paid from the cash resources of the debtor or from the proceeds of the sale of the
42 debtor's property and shall be considered an administrative expense. The level of
43 compensation shall be sufficient to attract competent individuals to serve as
44 administrators. The procedures for determining the liquidator's compensation and the
45 timing of its disbursement shall be established by procedural rules.

1 SEC. 84. *Disposition of encumbered property held by the debtor.* – Unless
2 otherwise established in this Act or in an approved liquidation plan, encumbered property
3 shall be sold according to the procedures set forth in the Rules of Court, the Civil Code,
4 and the Chattel Mortgage Law with a view to maximizing the liquidation dividend for the
5 creditors and stockholders: *Provided, however,* That the liquidator may not sell
6 encumbered property bundled with other property if the amount offered or bid is not
7 sufficient to cover the amount of the claims of the creditors holding liens on the property
8 offered for sale: *Provided further,* That the restrictions on the rights of secured parties to
9 foreclose on and sell encumbered immovable property shall not extend beyond one
10 hundred and twenty (120) days from the commencement date or the date of conversion
11 (whichever is later) and sixty (60) days from such date with regard to all other
12 encumbered property.

13
14 A sale of encumbered property according to the provisions of this Act shall
15 operate to divest the rights in the property of all secured parties and to vest their rights in
16 the purchaser subject to such rights of redemption as may be allowed by law: *Provided,*
17 That all rights of redemption by the debtor shall be deemed to have been conveyed with
18 the debtor's rights to the property.

19
20 SEC. 85. *Rules for payment of claims secured by encumbered property.* – No
21 later than ten (10) days after the sale, the liquidator shall apply the proceeds of the sale of
22 encumbered property to the following claims or credits in the following order:

- 23 1. reasonable costs of the sale;
- 24 2. relevant property taxes;
- 25 3. claims secured by a possessory lien;
- 26 4. secured credits according to a priority established by the date of their
27 registration in the appropriate registry;
- 28 5. statutory non-possessory liens on the property not registered with the
29 appropriate registry.

30
31 No subsequently registered secured credit shall be paid unless all secured credits
32 senior thereto are paid in full. Where proceeds are insufficient to pay in full all claims
33 falling under paragraph (5), they shall be satisfied *pro rata*. All unsatisfied claims of
34 creditors under this Section shall be paid according to Sections 86 and 87 of this Act.

35
36 SEC. 86. *Rules for payment of unsecured claims.* – The liquidator shall pay the
37 undisputed unsecured claims of the debtor according to the order set forth in Section 85
38 of this Act. The liquidator shall not pay the claims of any particular class unless and until
39 the creditors of the more senior classes have been paid in full or adequate funds have
40 been set aside for such payment. Where assets are available only to pay a portion of a
41 class, the liquidator shall make payment on a pro-rata basis.

42
43 SEC. 87. *Priority of unsecured claims.* – The liquidator shall distribute the
44 proceeds from the sale of unencumbered property and shall distribute surpluses from the
45 sale of encumbered property according to the following order:

- 46 1. administrative expenses remaining unpaid;

2. unpaid salaries and wages, and other mandated compensation, earned before the commencement date and the corresponding withholding tax of employees of the debtor, other than its officers and directors;
3. taxes and assessments due the national government, and any province, city or municipality before the commencement of insolvency proceedings that are not otherwise treated in this Sub-Chapter;
4. all claims not otherwise specified in this Section;
5. claims that have been subordinated by either consent of the creditor or by a provision in this Act or other legislation.

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

SEC. 88. *Order removing the debtor from the list of registered entities at the Securities and Exchange Commission.* – Upon determining that the liquidation has been completed according to this Act and applicable law, the court shall issue an order approving the report and ordering the Securities and Exchange Commission to remove the debtor from the registry of legal entities.

SEC. 89. *Termination of proceedings.* – Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the Securities and Exchange Commission, the court shall issue an order terminating the proceedings.

CHAPTER V --- PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR REHABILITATION PROCEEDINGS

Sub-Chapter 1. Banks and other Financial Institutions under Rehabilitation Receivership pursuant to a State-Funded or State-Mandated Insurance System

SEC. 90. *Provision of assistance.* – The court shall issue orders, adjudicate claims, and provide for other relief necessary to assist in the liquidation of a financial institution under rehabilitation receivership established by a state-funded or state-mandated insurance system.

SEC. 91. *Application of relevant legislation.* – The liquidation of financial institutions shall be determined by the relevant legislation. The provisions in this Act shall apply in a suppletory manner.

Sub-Chapter 2. Foreign Registered Corporations with Assets in the Philippines

SEC. 92. *Initiation of proceedings.* – The court shall set a hearing in connection with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction,

1 upon the submission of a petition by the representative of the foreign entity that is the
2 subject of the foreign proceeding.

3
4 SEC. 93. *Provision of relief.* – The court may issue orders:

- 5 1. suspending any actions to enforce claims against the entity or otherwise
6 seize or foreclose on property of the foreign entity located in the
7 Philippines;
- 8 2. requiring the surrender of property of the foreign entity to the foreign
9 representative; or
- 10 3. providing other necessary relief.

11
12 SEC. 94. *Factors determining entitlement to relief.* – In determining whether to
13 grant relief under this Sub-Chapter, the court shall consider:

- 14 1. the protection of creditors in the Philippines and the inconvenience in
15 pursuing their claims in a foreign proceeding;
- 16 2. the just treatment of all creditors through resort to a unified insolvency or
17 rehabilitation proceeding;
- 18 3. whether other jurisdictions have given recognition to the foreign proceeding;
- 19 4. the extent that the foreign proceeding recognizes the rights of creditors and
20 other interested parties in a manner substantially in accordance with the
21 manner prescribed in this Act; and
- 22 5. the extent that the foreign proceeding has recognized and shown deference to
23 proceedings under this Act and previous legislation.

24 25 CHAPTER VI --- MISCELLANEOUS PROVISIONS

26 SEC. 95. *Penalties.* – A director, officer or other employee of the debtor who
27 commits any one of the following acts shall, upon conviction thereof, be punished by a
28 fine no more than one million pesos and imprisonment for not less than three (3) months
29 nor more than five (5) years for each offense:

- 30 1. if he shall, either after the commencement date or prior thereto with
31 contemplation of their commencement, hide or conceal, or destroy or cause to
32 be destroyed or hidden any property belonging to the debtor; or if he shall
33 hide, destroy, alter, mutilate, or falsify, or cause to be hidden, destroyed,
34 altered, mutilated, or falsified, any book, deed, document, or writing relating
35 thereto, or if he shall, with intent to defraud his creditors, make any payment,
36 sale, assignment, transfer, or conveyance of any property belonging to the
37 debtor;
- 38 2. if he shall, in any case of any person having, to his knowledge or belief,
39 proved a false or fictitious debt against the debtor he shall fail to disclose the
40 same to the rehabilitation receiver or liquidator within one month after coming
41 to the knowledge or belief thereof; or if he shall attempt to account for any of
42 the debtor's property by fictitious losses or expenses; or
- 43 3. if he shall knowingly violate a prohibition or knowingly fail to undertake an
44 obligation established this Act.

1 *SEC. 96. Separability provision.* – If any provision of this Act shall be held
2 invalid, the remainder of this Act not otherwise affected shall remain in full force and
3 effect.
4

5 *SEC. 97. Repealing clause.* – Sections 51 and 52 of the Insolvency Law (R.A.
6 1956), as amended, and Section 119 of the Corporation Code (Batas Pambansa Blg. 68)
7 are hereby repealed. All other laws, orders, rules and regulations, or parts thereof,
8 inconsistent with any provisions of this Act are hereby repealed or modified accordingly.
9

10 *SEC. 98. Coverage.* – Notwithstanding any provision of law to the contrary, the
11 insolvency and rehabilitation of juridical entities shall be governed by this Act and the
12 provisions of the Civil Code (except Article 2237, and Articles 2241 to 2251, thereof)
13 shall apply in a suppletory manner. Insolvency of natural persons shall be governed by
14 special laws insofar as they are not inconsistent with the Civil Code.
15

16
17 *SEC. 99. Application to pending insolvency, suspension of payments, and*
18 *rehabilitation cases.* – This Act shall govern all petitions filed after it takes effect, and
19 also all further proceedings in insolvency, suspension of payments and rehabilitation
20 cases then pending, except to the extent that in the opinion of the court their application
21 would not be feasible or would work injustice, in which event the procedures set forth in
22 prior laws and regulations shall apply.
23

24 *SEC. 100. Transfer of cases pending at the Securities and Exchange Commission.*
25 – The jurisdiction of the Securities and Exchange Commission over pending suspension
26 of payments/rehabilitation cases filed as of 30 June 2000 is hereby transferred to the
27 Courts of general jurisdiction or the appropriate Regional Trial Court.
28

29 *SEC. 101. Application to pending contracts.* – This Act shall apply to all
30 contracts of the debtor regardless of the date of perfection.
31

32 *SEC. 102. Effectivity date.* – This Act shall take effect thirty (30) days after its
33 publication in the Official Gazette or in two (2) newspapers of general circulation.
34