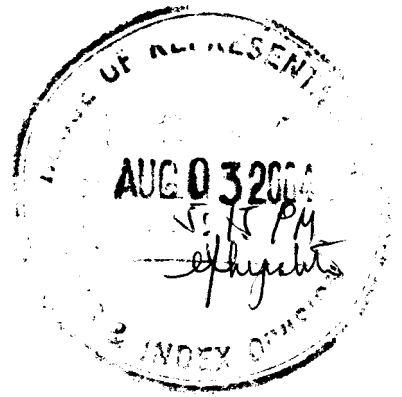


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress
First Regular Session

House Bill No. 2073



Introduced by **Honorable Matias V. Defensor, Jr.**

EXPLANATORY NOTE

This bill seeks to provide for debt- relief measures to rehabilitate financially distressed enterprises and for other purposes.

More than three years have passed since the financial crisis affected every industry in Asia, but the crisis still persists, dampening prospects for growth and even baffling authorities on how best to cure it. Rocketing fuel prices, waning investors confidence, rising inflation and unemployment and the volatility of the peso against the dollar contribute to the pessimism and negative perception of the business community. In fact, a one-peso deflation per day costs businesses billions in losses, particularly those with outstanding loans in dollar denomination. This gives the impression that the Philippines is becoming a smaller and less safe place to infuse fresh capital, since investors are faced with shrinking markets, increasing debts and difficult choices. Many businesses are now in the dumps, and are hoping for the enactment of a measure with a comprehensive approach to the complex problems that beset them, especially when they can no longer pay their outstanding obligations as they come due. Their debts, in other words, is their most immediate concern.

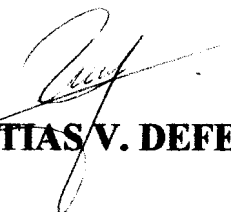
Adjudication of cases involving financially distressed companies were based on the out-dated Insolvency Law passed in 1909 and the suspension of payments and rehabilitation provisions in Presidential Decree 902-A. However, while the Securities and Exchange Commission (SEC) has

recently adopted rules governing petitions for suspension of payment and rehabilitation of financially distressed companies, it has been hampered by inadequacy of laws concerning such cases. Furthermore, the recently passed Securities Regulation Code transferred the SEC's jurisdiction over suspension of payment cases to the Regional Trial Courts. Lacking a set of procedural rules to govern these cases, the courts too have no choice but to apply the antiquated procedures of the Insolvency Law. This will not be responsive enough to the plight of the companies that need the relief offered by a sound practicable program on rehabilitation on suspension of payment.

This bill offers distraught enterprises debt-relief measures that will secure survival of the enterprises while keeping the rights of the creditors with duly registered liens against the enterprises assets. Four different Fast-Track Rehabilitation, COURT supervised Rehabilitation and Dissolution-Liquidation.

It is an innovation of the current practice and offers workable solutions for the preservation of an enterprise while allowing its ownership to be restructured and its creditors treated fairly.

Thus, approval of this bill is earnestly sought.



MATIAS V. DEFENSOR, JR.

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Introduced by **Honorable Matias V. Defensor, Jr.**

**AN ACT PROVIDING FOR DEBT-RELIEF MEASURES TO
REHABILITATE FINANCIALLY DISTRESSED ENTERPRISES
AND FOR OTHER PURPOSES.**

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

CHAPTER I - GENERAL PROVISIONS

SECTION 1. *Title* – This shall be known as the Corporate Recovery Act.

SEC. 2. *Declaration of Policy* - It shall be the policy of the State to encourage a juridical debtor and its creditors to collectively and realistically resolve and adjust competing claims and property rights under the supervision and approval of a court when the debtor has become insolvent. Such resolutions shall respect the differing priorities amongs claims, and where possible, attempt to maintain the debtor's operations, even though it may come under different ownership or a different corporate entity as part of the resolution. When such resolutions are not feasible, it is in the interest of the State to allow a speedy liquidation of the juridical debtor's assets and the payoff of its debts to the extent possible.

SEC. 3. *Definition of terms.* – As used in this Act the term:

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

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

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

6 (d) “Creditor” shall refer to a juridical entity or physical person holding a claim
7 against the debtor.

8 (e) “Debtor” shall refer to a juridical entity organized in the Philippines unless
9 specifically excluded by a provision in this Act.

10 (f) “Encumbered property” shall refer to property securing the payment of a claim,
11 regardless of whether the property is classified as movable or immovable or whether the lien
12 against the property is statutory or consensual.

13 (g) “General unsecured creditor” shall refer to a creditor whose claim or a portion
14 thereof is neither secured, preferred, nor subordinated under this Act.

15 (h) “Individual notice to creditor and shareholders” shall refer to notification by the
16 conservator to creditors and shareholders who have filed a notice of appearance in accordance
17 with this Act.

18 (i) “Insider” shall refer to a juridical entity’s director, officer, or other person in
19 control of the juridical entity; a partner of the juridical entity in cases when the juridical entity is a
20 partnership, a shareholder of the juridical entity holding more than ten percent of the shares
21 thereof, or those persons related to these persons by consanguinity or affinity within the fourth
22 civil degree: a partnership in which the juridical entity is a general partner, or a juridical entity
23 that is an affiliate of the juridical entity in question.

24 (j) “Involuntary proceedings” shall refer to proceedings initiated by creditors.

25 (k) “Proceedings” shall refer to judicial proceedings commenced by the Court’s
26 acceptance of a petition filed under this Act.

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

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

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

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

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

For purposes of this Section:

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

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

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

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

SEC. 6. *Power of Courts.* - Upon motion or *reple propio* the Court may issue any order or judgment that is necessary to carry out the provisions in this Act. Parties that are granted relief under such orders shall be entitled to immediate execution thereof unless such orders are restrained or enjoined by the Court of Appeals or the Supreme Court.

1 SEC. 7. *Procedural rules.* – The Supreme Court may promulgate rules of practice,
2 pleading, and procedure to substitute for or adopt any provisions in this Act that it determines to
3 be procedural in nature: *Provided, however,* That such rules shall not restrict, enlarge, or modify
4 any substantive rights established by this Act.

5 Sec. 8. *Substantive and procedural consolidation.* – Each juridical entity shall be
6 considered in separate cases under the proceedings in this Act. The assets and liabilities of a
7 debtor may not be commingled or aggregated with those of another under these proceedings;
8 *Provided, however,* That the Court may allow for procedural consolidation of cases to allow for a
9 more efficient and speedy disposition of proceedings under this act.

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

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

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

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

SEC. 11. *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 conservator or liquidator.

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

CHAPTER II - INITIATION OF PROCEEDINGS

Sub-Chapter 1. Voluntary Proceedings

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

- (a) identify the debtor, its principle activities, and its addresses;
- (b) state the fact of and the case of the debtor's insolvency or inability to pay its obligations as they become due;
- (c) specifically state the relief sought pursuant to Chapter IV of this Act.
- (d) Include the attachments required by this Act.

SEC. 14. *Attachments to the petition.* – The following documents shall be filed with the petition.

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

(a) the audited annual financial statements of the debtor from the three years prior to the filing of the petition;

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

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

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

12 (e) copies of certificates of title to the debtor's property;

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

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

19 (h) a detailed projection of cash flows of the debtor for at least ninety (90) days from
20 the date that the petition is filed, taking into account the expenses likely to be incurred in
21 connection with proceedings under this Act;

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

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

26 SEC. 15. *Commencement of proceedings.* - Proceedings shall commence upon the
27 Court's issuance of an order finding the petition and attachments to be reasonably sufficient in

1 form and substance. Such an order shall include the elements set forth in Section 24 of this Act.

2 It shall also, where applicable, require that the debtor provide documents not included with its
3 petition within a reasonable time period.

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

5 SEC. 16. *Circumstances necessary to initiate involuntary proceedings.* – A creditor
6 shall be entitled to initiate involuntary proceedings against a debtor if:

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

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

11 SEC. 17. *Petition to initiate involuntary proceedings.* – In order to establish an
12 entitlement to relief under this Act, the creditor's petition shall:

13 (a) identify the debtor, its principal activities, and its addresses;

14 (b) state the circumstances sufficient to support a petition to initiate involuntary
15 proceedings;

16 (c) specifically state the relief sought under Chapter IV of this Act;

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

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

CHAPTER III — ADMINISTRATION OF THE PROCEEDINGS

Sub-Chapter 1. The Debtor Under Proceedings

Sec. 20. *Effect of commencement of proceedings.* -- The Court's issuance of an order commencing proceedings (either voluntary or involuntary) shall:

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

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

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

(d) suspend all legal proceedings against the debtor in other courts on grounds of *lis pendens*;

(e) suspend all actions to enforce any judgements against the debtor;

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

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

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

(i) 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.

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

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

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

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

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

22 SEC. 23. *Application of suspension to government financial institutions.* – The
23 provisions in the preceding Section shall apply to government financial institutions as creditors,
24 notwithstanding provisions in their charters to the contrary.

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

27 a) Identify the debtor, its principle activities, and its address;

- 1 b) State the grounds for initiating the proceedings;
- 2 c) State the relief sought under this Act and any requirements or procedures particular
- 3 to the relief sought;
- 4 d) State the legal effects of the commencement of the proceedings;
- 5 e) Appoint a conservator, or liquidator when appropriate;
- 6 f) Summarize the requirements and deadlines for creditors to establish their claims
- 7 against the debtor;
- 8 g) Indicate the location(s) at which documents regarding the debtor and the
- 9 proceedings under this Act may be reviewed and copied;

10 The conservator shall publish the order in a newspaper of general circulation for two

11 consecutive weeks, the date of the first publication to be no later than five business days after

12 issuance of the order.

13 SEC. 25. *Property of the debtor under the control or management of third parties.*

14 – Third parties possessing or controlling property of the debtor may not sell or otherwise convey

15 it to persons other than the debtor, unless otherwise specified by the conservator. Upon written

16 request of the conservator and after payment of any claims secured by possessory pledges or

17 mechanics' liens, such third parties shall transfer possession or control of such to the latter:

18 *Provided, however,* That the conservator may arrange to have the third party continue to possess,

19 manage, or dispose of property if such an arrangement would more likely preserve and/or

20 increase the value of the property in question or the total value of the assets held by the debtor.

21 SEC. 26. *Unencumbered property that may be sold or otherwise transferred*

22 *during the proceedings.* – The Court may rescind any transfers of the debtor's unencumbered

23 property or encumbrances thereof by the debtor or its agents that occur after the commencement

24 of the proceedings and are outside the ordinary course of business: *Provided, however,* That the

25 following transactions may be implemented upon a decision of the Court, after notice and

26 hearing.

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

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

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

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

10 e) Payments made to reclaim property of the debtor held pursuant to a possessory
11 pledge or mechanic's lien.

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

17 SEC. 28. *Sale or disposal of encumbered property or property of others in trust or*
18 *otherwise authorized by the debtor.* – No provision in this Act shall be read as to create a defense
19 against estafa or other criminal charges or civil claims against persons responsible for the sale or
20 disposal of encumbered property or property of others held by the debtor: *Provided, however,*
21 *That the conservator may sell or dispose of such property if:*

22 a) Such sale or disposal is necessary for the continued operation of the debtor's
23 business,

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

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

1 SEC. 29. *Treatment of rapidly depreciating encumbered property owned by the*
2 *debtor.* – Upon the application of a creditor whose claim is secured by movable property subject
3 to potentially rapid depreciation, the Court shall, after notice and hearing, order the conservator to
4 either:

- 5 a) Allow the property to be foreclosed upon by the secured creditor;
- 6 b) Convey to the secured creditor a lien on substitute property of the debtor if such
7 is acceptable to the creditor and is not opposed by any senior lien holders of such property, or
8 if such is not available,
- 9 c) Convey to the secured creditor a lien on the residual funds from the sale of any
10 encumbered property during the proceedings.

11 SEC. 30. *Rescission of pre-commencement transactions.* – Transactions that have
12 occurred prior to commencement of proceedings may be rescinded by the Court on grounds that
13 they were executed with an intent to defraud creditors if it finds evidence sufficient to show such
14 a design by the debtor and the third party. A disputable presumption of such design shall arise if
15 the transaction:

- 16 a) Provides unreasonably inadequate consideration to the debtor and is executed one
17 hundred and eighty (180) days prior to the commencement of proceedings if the third party is an
18 insider of the debtor, and ninety (90) days prior to the commencement of proceedings if the third
19 party is not an insider of the debtor;
- 20 b) Involves the payment of a dividend to shareholders executed in violation of the
21 Corporation Code, the provisions in the debtor's corporate charter or by-laws, or other
22 agreements of the debtor;
- 23 c) Involves an accelerated payment of a claim to a creditor one hundred and eighty
24 (180) days prior to the commencement of proceedings if the creditor is an insider of the debtor
25 and ninety (90) days prior to the commencement of proceedings if the creditor is not an insider of
26 the debtor;

1 d) Provides security or additional security for a pre-existing debt executed one
2 hundred and eighty (180) days prior to the commencement of proceedings if the creditor is an
3 insider of the debtor and ninety (90) days prior to the commencement of proceedings if the
4 creditor is not an insider of the debtor.

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

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

17 SEC. 32. *Post-commencement credit.* – With the concurrence of the committee of
18 general unsecured creditors of the debtor and the approval of the Court, the conservator may:

19 a) Enter into credit arrangements on behalf of the debtor, the payments under which
20 shall be considered an administrative expense; or

21 b) Enter into credit arrangements on behalf of the debtor, secured by mortgages of
22 its unsecured property.

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

1 for salary and separation pay for work performed after commencement of proceedings shall be an
2 administrative expense.

3 SEC. 34. *Treatment of lessors and other counter-parties in contract.* – Unless
4 specifically cancelled by a court decree prior to issuance of the order commencing proceedings,
5 all contracts of the debtor with creditors and other third parties shall be deemed to continue in
6 force, regardless of pre-commencement defaults by the debtor provided that the debtor makes
7 payments for such services and goods that we provided after commencement of proceedings.

8 Within sixty (60) days following commencement of the proceedings, the conservator
9 shall notify each contractual counter-party of whether the debtor is confirming or breaching the
10 particular contract. Contractual obligations of the debtor arising during this period, and
11 afterwards for confirmed contracts shall be an administrative expense. Contracts not confirmed
12 by the required deadline shall be considered breached. Obligations of the debtor for damages and
13 other penalties arising as the result of the conservator's election to breach shall be considered a
14 pre-commencement claim against the debtor and shall be added to the registry of claims
15 established in Sub-chapter 2 of this Chapter.

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

21 Sub-Chapter 2. Determination of Claims

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

24 SEC. 37. *Establishment of a preliminary registry of claims.* – Within twenty days
25 of appointment, the conservator shall establish a preliminary registry of claims. Such registry
26 shall state for each claim:

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

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

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

21 SEC. 38. *Procedure for supplementing the preliminary registry of claims.* – Any
22 person may file application to the conservator to recognize a claim against the debtor within
23 twenty days after the second date of publication notice that the preliminary registry of claims has
24 become available.

25 SEC. 39. *Procedure for determining disputed and undisputed claims.* – Within
26 thirty days from the expiration date for supplementing the preliminary registry of claims,
27 creditors, shareholders and other interested parties may submit a challenge of a claim or claims to

1 the Court, serving a certified copy on the conservator and the challenged creditor. Such challenge
2 shall set forth with reasonable specificity the basis therefor. Upon the expiration of the thirty-day
3 challenge period, the conservator shall submit to the Court the registry of claims containing the
4 undisputed claims that have not been subject to challenge. Such claims shall become final upon
5 the filing of the registry and may be subsequently set aside only on grounds of fraud, accident,
6 mistake, or excusable neglect.

7 SEC. 40. *Procedure for adjudicating disputed, challenged and unliquidated*
8 *claims.* – Decisions of the conservator regarding a claim may be appealed to the Court. In such
9 disputes, the parties shall be the conservator and the disputing creditor, or the debtor (in cases
10 where a claim is alleged to be wrongfully allowed): *Provided, however,* That any creditor or
11 other party who might be prejudiced by the allowance or disallowance of the claim may intervene
12 in the proceeding.

13 SEC. 41. *Procedure for appealing decisions of the conservator regarding*
14 *disputed, challenged and unliquidated claims.* – The procedures for appealing the decisions of the
15 conservator shall be governed by applicable Rules of Court.

16 SEC. 42. *Estoppel of secured creditors regarding overvaluation of their*
17 *encumbered property.* – A secured creditor claiming a full or partial security shall be estopped
18 from claiming as an unsecured creditor the difference between the claimed and realized value of
19 the encumbered property if the amount realized from a sale of the encumbered property fails to
20 cover the claimed or attributed value thereof. Such amount shall be a subordinated claim under
21 Section 106 of this Act.

22 SEC. 43. *Estimation of claims for purposes of voting or serving on a creditors'*
23 *committee.* – Upon request of a creditor or shareholder, the Court shall, after notice and hearing,
24 estimate a disputed, challenged, or unliquidated claim for determination of the creditor's rights in
25 participating in collective decision-making of creditors. In such disputes, the parties shall be the
26 conservator and the disputing creditor: *Provided, however,* That any creditor who might be
27 prejudiced by the estimation of the claim may, participate in the proceedings.

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

2 SEC. 44. *Who may serve as a conservator.* – Any individual with the following
3 qualifications may serve as a conservator:

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

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

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

10 d) Absence of any criminal record or evidence of questionable moral character,

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

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

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

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

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

- 1 (b) he is engaged in a competing line of business as the debtor;
- 2 (c) he is, or was within two (2) years prior to the filing of the petition, a director, officer
- 3 or employee of the debtor or any of its present creditors;
- 4 (d) he is, or was within two (2) years prior to the filing of the petition, the auditor or
- 5 accountant of the debtor, or a director, officer or employee thereof;
- 6 (e) he is, or was within two (2) years prior to the filing of the petition, an underwriter of
- 7 the outstanding securities of the debtor, or a director, officer or employee thereof;
- 8 (f) he is related by consanguinity or affinity within the fourth civil degree to the
- 9 individuals enumerated in this Section; or
- 10 (g) he has any other direct or indirect material interest in the debtor or any creditor
- 11 sufficient to cause reasonably based concern that such interest would compromise impartiality or
- 12 diligence in performing conservatorship duties.

13 SEC. 46. *Appointment of a conservator.* - The conservator shall be appointed by the

14 Court: *Provided, however,* That the Court shall appoint as conservator any qualified individual

15 whose nomination is supported by more than fifty (50) percent of the secured creditors and

16 general unsecured creditors, if evidence of such is submitted with the petition or by a

17 manifestation to the Court prior to the conservator's appointment.

18 SEC. 47. *Rights and duties of a conservator.* - Subject to the control of the Court, the

19 conservator shall administer and preserve the property of the debtor during the pendency of the

20 proceedings, for purposes of protecting the interests of the creditors and shareholders thereof,

21 taking into account their rights as determined by this Act, the rules of procedure of the Court, and

22 other applicable laws: *Provided, however,* That, absent evidence of circumstances justifying

23 more direct management, the rights and responsibilities of administering and preserving the assets

24 of the debtor shall be delegated to the debtor's management.

25 The conservator shall further be deemed an officer of the Court tasked with facilitating

26 the resolution of the various rights of the creditors and shareholders.

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

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

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

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

24 SEC. 51. *Recordation of Pending Proceedings at Property Registration Offices.* – The
25 conservator shall take all reasonable steps to preserve the rights of the debtor through submissions
26 to the applicable land and property registries in accordance with applicable legislation: *Provided,*

1 That no such actions shall diminish or otherwise compromise the rights of claimants with valid,
2 prior-registered liens against such property.

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

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

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

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

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

- 21 (a) object to petitions for post-commencement financing requested by the conservator;
22 (b) the debtor is a non-stock corporation or a partnership; or
23 (c) more than half of the secured creditors request conversion to relief under Sub-
24 chapter 2 of this Chapter within thirty days of notice of commencement of proceedings.

25 SEC. 57. *Presentation and Approval of Plan.* – Within thirty days of commencement of
26 proceedings, the conservator shall submit a time bound plan for implementing the relief allowed

1 under this sub-chapter, serving individual notice on creditors and shareholders that a plan is
2 available to them for review and comment.

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

7 SEC. 58. *Establishment and Capitalization of a Subsidiary of the Debtor.* – The
8 conservator shall establish a subsidiary corporation (NewCo) whose shares shall be issued to the
9 debtor in the form of a single class of common stock: *Provided, however, That* five of the issued
10 shares may be issued to nominee holders/incorporators, one of whom shall be the conservator.
11 The number of shares issued shall equal the amount of indebtedness of the debtor represented by
12 its disputed and undisputed claims reflected in the registry of claims. The par value of each share
13 shall be one peso: *Provided, however, That* the debtor may issue no par value shares if the
14 amount of the indebtedness exceeds the estimated value of the debtor's assets.

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

19 SEC. 59. *Non-requirement of Approval of Shareholders.* – Notwithstanding the
20 provisions in the Corporate Code, the debtor, through, the conservator, may transfer all or
21 substantially all of the assets of the debtor to NewCo without the approval of the debtor's
22 shareholders.

23 SEC. 60. *Issuance of Bonds.* – The conservator may also arrange for the issuance of
24 bonds by NewCo to the debtor: *Provided, That* the total nominal value of such bonds shall not
25 exceed twenty percent of the debt of the debtor and the monthly payments on which shall not
26 exceed twenty percent of the monthly payment obligations of the debtor at the time of
27 commencement of the proceedings: Such bonds may be secured by liens on property of NewCo.

1 Notwithstanding any contractual prohibitions or regulations to the contrary, the conservator may
2 establish and register liens on encumbered property of NewCo: *Provided*, That such liens are
3 junior to pre-existing liens.

4 SEC. 61. *Offer to Current Shareholders.* – In cases where the debtor had initiated
5 voluntary proceedings, the shareholders of the debtor shall have the option of purchasing up to
6 twenty (20) percent of the shares of NewCo, prior to their public sale. The purchase price of the
7 shares shall be equal to twenty (20) percent of the total disputed and undisputed claims. The
8 expiration date for receiving offers shall be no later than sixty days from approval of the plan.
9 Each purchase offer shall be combined with the offer to tender at least twenty percent of the
10 shares of the debtor. In cases where more than one offer is tendered, the winner of the tender
11 shall be the offeror submitting the greatest number of the debtor's shares. The funds tendered by
12 the purchaser shall be held in escrow until the auction of the remaining shares. Shares that are
13 submitted in a winning bid shall obtain the status of treasury shares of the debtor.

14 SEC. 62. *Auction of Shares.* – The shares and bonds of NewCo shall be offered to the
15 public in a manner designed to maximize the price paid: *Provided, however*, That the reserve
16 price for the shares and bonds shall be equal to the amount of the secured claims against the
17 debtor plus estimated outstanding administrative costs of the proceeding, less the amount raised
18 from any initial offering to shareholders.

19 SEC. 63. *Creditor Claim Certificates.* – In order to facilitate the liquidity of claims and
20 increase demand for the shares of NewCo, the conservator or his agent, with the approval of the
21 Court, may issue up to five creditor claim certificates for each claim, to be denoted series A-E.
22 Each such certificate shall indicate on its face the amount of the claim and its priority status under
23 Sub-chapter 4 of this Chapter. At the request of the creditor, and for a reasonable fee, the
24 conservator or his agent shall issue certificates in smaller amounts.

25 SEC. 64. *Transferring Creditor Claim Certificates.* – Individuals may purchase creditor
26 claim certificates of any series from creditors or other holders, the consideration for which may
27 be cash or a promise of shares in NewCo. Such certificates may be transferred by delivery or

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

4 SEC. 65. *Use of Creditor Claim Certificates in Bidding.* – The auction organizer shall
5 accept creditor claim certificates in lieu of cash or in a combination therewith, taking into account
6 the valuation calculated under Section 67 of this Act. The inclusion of a creditor claim certificate
7 in a winning bid shall be deemed a complete waiver of the right represented by the certificate to
8 participate in the distribution of cash proceeds from the sale.

9 SEC. 66. *Valuation of Creditor Claim Certificates Submitted in Bidding.* – The value
10 ascribed to a creditor claim certificate of any particular class submitted in a bid shall be
11 proportional to the extent that cash generated from the offering of shares is available to pay non-
12 submitted claim certificates of that particular class.

13 SEC. 67. *Effect of Failure to Meet Reserve Price for Controlling Block of Shares.* – A
14 failure of the auction to garner an amount of cash and secured creditor claim certificates, which,
15 when added to the amount raised by the offer to current shareholders, equals the amount of the
16 secured claims and estimated administrative costs shall result in a conversion to liquidation
17 procedures under this Act. In such case the money in escrow from any shareholder offer and
18 from the bidders shall be returned, the contracts transferring the property of the debtor to NewCo
19 shall be rescinded, and any liens created to secure bonds of NewCo shall be cancelled.

20 SEC. 68. *Calling of Shareholders' Meeting.* – The conservator shall call an
21 extraordinary shareholders' meeting no later than thirty days after the finalization of the sale of
22 the shares of NewCo. The meeting shall call for, among other things, the election of new
23 members of the board of directors of NewCo.

24 SEC. 69. *Dissolution of the Debtor.* – After distribution of the proceeds from the sale of
25 the shares of NewCo, the conservator shall assume the rights and duties of a liquidator of the
26 debtor and finalize its dissolution according to procedures described in Sub-chapter 4 of this
27 Chapter.

Sub-Chapter 2. Court-Supervised Rehabilitation

SEC. 70. *Who is Eligible.* – Relief under this Sub-chapter is available to the following debtors:

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

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

SEC. 71. *Initial Meeting of Debtor and Creditors.* – Within thirty (30) days of commencement of proceedings, the conservator shall hold a meeting of creditors, the time and place of which shall be established in the order. The debtor shall be required to send a representative to answer questions under oath concerning matters of concern to the creditors.

SEC. 72. *Preparation of a Rehabilitation Plan.* – The debtor, through its board of directors, shall prepare a plan for initial submission to the conservator and the Court for distribution to the creditors and shareholders by no later than ninety (90) days after commencement of proceedings. The board of directors of the debtor may act on behalf of the shareholders to hire an individual or group of financial and legal experts to act as a rehabilitation planner: *Provided, however, That the debtor may waive its right to submitting a plan if it states so in its petition, in which case the committee of general unsecured creditors may prepare a plan for initial submission to the creditors and shareholders no later than one-hundred and twenty (120) days after commencement of proceedings. The committee of general unsecured creditors may hire an individual or group of financial and legal experts to act as a rehabilitation planner.*

SEC. 73. *Compensation of a Rehabilitation Planner.* – The compensation of a rehabilitation planner shall not be considered an administrative expense.

SEC. 74. *Affect of Failure to Submit Plan to Conservator Within the Required Period.* – The Court shall convert the proceedings to liquidation under Sub-chapter 4 of this Chapter, if a plan is not submitted to the conservator within the required period: *Provided, That the Court may*

1 allow an extension of time if approved by a majority of the secured creditors and general
2 unsecured creditors.

3 SEC. 75. *Minimal Contents of a Plan.* – In order to be approved by the Court, the plan
4 shall:

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

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

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

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

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

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

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

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

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

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

1 SEC. 76. *Disclosure to Creditors and Shareholders.* – Upon its completion, the plan
2 shall be submitted to the conservator and Court. The conservator shall make copies of the plan
3 available to the creditors and shareholders for review and copying and shall within five days of
4 receipt, notify each creditor and shareholder who has made an appearance of such availability.
5 Such notice shall inform the creditors and shareholders that they have the right to submit to the
6 conservator a manifestation of their opposition to the plan within forty-five days of receipt of
7 notice that the plan is available for review.

8 SEC. 77. *Submission of Plan for Approval.* – If the majority of a creditor or shareholder
9 class has not submitted a manifestation of opposition to the plan after forty-five (45) days from
10 the time it was distributed to the creditors and shareholders, the conservator shall submit the plan
11 to the Court for approval along with a manifestation of no opposition. If a majority of a class of
12 creditors or shareholders opposes the plan, the conservator shall submit a manifestation of such to
13 the Court instead of a plan for approval.

14 SEC. 78. *Conversion to Liquidation Proceedings Upon Rejection of the Plan.* – Upon
15 receipt of a manifestation by the conservator that a majority of a creditor or shareholder class has
16 rejected the plan, the Court shall convert the proceedings to those under Sub-chapter 4 of this
17 Chapter.

18 SEC. 79. *Minimal Standards for Confirmation.* – The Court shall approve a plan only if
19 the following requirements are met:

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

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

5 SEC. 80. *Approval of Plan Notwithstanding Disputes Over Claims.* – The Court may
6 approve a plan notwithstanding unresolved disputes over claims so long as the required support of
7 the plan is maintained regardless of the outcome of the disputes and the plan can accommodate
8 payment of the claims regardless of the outcome of the disputes.

9 Claims arising after approval of the plan that are otherwise not treated by the plan are not
10 subject to any suspension order.

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

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

16 SEC. 81. *Liability of general partners of a partnership for unpaid balances under an*
17 *approved plan.* – The approval of the plan shall not affect the rights of creditors to pursue actions
18 against the general partners of a partnership to the extent they are liable under relevant legislation
19 for the debts thereof.

20 SEC. 82. *Treatment of income derived from forgiveness of debt.* – Income imputed upon
21 the debtor by any indebtedness reduced in connection with a plan's approval shall be considered
22 income earned prior to commencement of proceedings under this Act.

23 SEC. 83. *Effect of failure to approve.* – A failure to approve the plan by the Court shall
24 result in a conversion of proceedings under this Sub-chapter to those under Sub-chapter 4 of this
25 Chapter.

26 SEC. 84. *Revocation of plan on grounds of fraud.* – Within ninety (90) days from the
27 approval of the rehabilitation plan, and after notice and hearing, the Court may revoke the

1 approval thereof on the grounds of fraudulent inducement. In such case, the debtor shall come
2 under the proceedings described in Sub-chapter 4 of this Chapter.

3 SEC. 85. *Discharge of the conservator.* – Upon issuance of approval of the rehabilitation
4 plan, the conservator shall provide a final report and accounting to the Court. The Court shall
5 then discharge the conservator of his duties.

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

7 SEC. 86. *Requirements.* – Any debtor as defined under this Act may file a petition
8 seeking pre-negotiated rehabilitation as a form of relief. The petition, in addition to the
9 requirements under Sub-chapter 2 of this Chapter shall include:

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

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

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

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

19 SEC. 87. *Procedures.* – Upon receipt of a petition seeking pre-negotiated rehabilitation,
20 the Court shall issue an order in accordance with Sub-chapter 1 of Chapter 3 of this Act,
21 supplemented with information sufficient to inform interested parties as to the deadlines and
22 procedures established in this Sub-chapter.

23 SEC. 88. *Exemption from determination of claims.* – The requirements of Sub-chapter 3
24 of Chapter 3 shall not apply to proceedings under this Sub-chapter.

1 SEC. 89. *Inspection and review of rehabilitation plan.* – Upon commencement of the
2 proceedings, the conservator shall make available for review and copying the rehabilitation plan
3 by any interested party.

4 SEC. 90. *Approval by the Court.* – Within fifty (50) days from the date of the second
5 publication notice that proceedings have commenced, the Court shall approve the plan unless a
6 creditor submits an objection to it in accordance with this Sub-chapter.

7 SEC. 91. *Objection.* – Any creditor or shareholder, within forty five (45) days from the
8 second date of publication notice of commencement of proceedings may submit to the Court an
9 objection to a plan filed under this Sub-chapter. Objections to a rehabilitation plan shall be
10 limited to the following:

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

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

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

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

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

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

20 SEC. 92. *Hearing on objection.* – Upon receipt of an objection, the Court shall issue an
21 order setting the time and date of the hearing on the objection. The date of such hearing shall be
22 no earlier than sixty (60) and not later than seventy (70) days after the second date of publication
23 notice of commencement of proceedings. If the Court finds the objection valid, it shall order,
24 when possible, the debtor to cure the petition or plan within a reasonable period. If the Court
25 determines that the debtor and/or creditors acted in bad faith, or that the bases for objection are
26 non-curable, the Court shall order the conversion of these proceedings to those under Sub-chapter

4 of this Chapter. A finding by the Court that the objection lacks merit shall issue an order approving the plan in accordance with Sub-chapter 2 of this Chapter.

SEC. 93. *Affect of approval.* – Approval of the plan under this Chapter shall have the same legal effect as approval of a plan under Sub-chapter 2 of this Chapter.

Sub-Chapter 4. Dissolution and Liquidation

SEC. 94. *Requirements for initiation.* Dissolution and liquidation proceedings shall commence either:

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

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

SEC. 95. *Appointment of a liquidator.* – The order commencing liquidation proceedings shall name a liquidator, who may be the conservator administering the debtor prior to the commencement of the liquidation portion of the proceedings.

SEC. 96. *Consequences of initiating liquidation proceedings.* – The commencement of liquidation proceedings shall either initiate or continue the administrator of the debtor in accordance with Chapter III of this Act subject to the particular provisions under this Sub-chapter: *Provided, however, That* upon an initiation of liquidation proceedings, the debtor shall be declared dissolved and all contracts and agreements of the debtor shall be deemed breached as of the date of commencement of proceedings.

SEC. 97. *Specific rights and duties of a liquidator.* – In addition to the rights and duties of a conservator, the liquidator shall have the following rights and duties:

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

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

7 (c) to discontinue the business operations of the debtor except for those operations
8 necessary to maintain the value of the properties of the debtor prior to their sale;

9 (d) to dismiss the debtor's management and work force to the extent that they are not
10 needed to maintain the value of the properties of the debtor prior to their sale;

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

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

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

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

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

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

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

SEC. 98. *Compensation of a liquidator.* - The compensation scheme for the liquidator shall be established with a view towards providing the liquidator with reasonable incentives to maximize the amount of money paid out to creditors and shareholders for legitimate claims.

SEC. 99. *Requirements of a liquidation plan.* The liquidation plan shall:

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

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

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

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

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

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

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

SEC. 100. *Hearing and approval of plan.* - Upon receipt of the liquidation plan, the Court shall issue an order setting a hearing thereon, informing the creditors that the Plan has been submitted and is available for examination and copying, and directing all creditors of record to

1 submit their comment or opposition thereto not later than fifteen (15) days before the date of the
2 hearing.

3 SEC. 101. *Disposition of encumbered property held by the debtor.* -- The liquidator may
4 arrange to dispose of encumbered property of the debtor through any means allowed by law in
5 order to maximize the liquidation dividend for the creditors and shareholders: *Provided, however,*
6 That the liquidator may not sell encumbered property bundled with other property if the amount
7 offered or bid is not sufficient to cover the amount of the claims of the creditors holding liens on
8 the property offered for sale: *Provided further,* That the restrictions on the rights of secured
9 creditors to foreclose on and sell encumbered immovable property shall not extend beyond sixty
10 (60) days from the date of the approval of the liquidation plan and thirty (30) days from such date
11 with regard to all other encumbered property.

12 SEC. 102. *Rules for payment of claims secured by encumbered property.* -- The liquidator
13 shall distribute the proceeds of the sale of encumbered property, after paying reasonable costs of
14 sale, relevant property taxes, and the expenses necessary to extinguish any possessory liens,
15 according to a priority established by the date of their registration in the appropriate registry. No
16 subsequently registered lien holder shall receive payment unless all lien holder senior thereto are
17 paid in full. Proceeds remaining after payment of claims secured by registered liens shall be
18 applied to claims secured by statutory non-possessory liens on the property not registered with the
19 appropriate registry: *Provided,* That portions of claims arising from imposition of a fine, penalty,
20 forfeiture, or exemplary or punitive damages that are not compensatory for pecuniary loss
21 suffered by the creditor shall be paid according to Section 106 of this Act.

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

1 SEC. 103. *Rules for payment of unsecured claims.* -- The liquidator shall pay the
2 undisputed unsecured claims of the debtor according to the order set forth in Section 106 of this
3 Act. The liquidator shall not pay the claims of any particular class unless and until the creditors
4 of the more senior classes have been paid in full. Where assets are available only to pay a portion
5 of a class, the liquidator shall make payment on a pro-rata basis.

6 SEC. 104. *Priority of unsecured claims.* -- The liquidator shall distribute the proceeds
7 from the sale of unencumbered property and shall distribute surpluses from the sale of
8 encumbered property according to the following order in accordance with the proceedings
9 established in Section 105 of this Act.

10 (a) administrative expenses;

11 (b) unpaid labor wages, other mandated compensation, and corresponding withholding
12 tax on laborers;

13 (c) claims of the Government for taxes and other mandatory contributions to federal and
14 local budgetary agencies not otherwise treated in this Sub-chapter arising through the day before
15 commencement of proceedings;

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

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

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

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

23 SEC. 105. *Contingency for disputed claims.* -- The liquidator shall set aside funds for
24 paying all disputed claims. In the event that claims are denied and appeals on such decisions are
25 exhausted, the liquidator shall distribute the funds to unpaid undisputed creditors and
26 shareholders according to the order of priority in Section 104 and 106 of this Act.

1 SEC. 106. *Submission and review of final report of liquidator.* – Upon distribution of the
2 proceeds, the liquidator shall submit a report to the Court which shall describe the methods and
3 results of the sale of debtor's assets and the distribution of proceeds to the creditors. The
4 liquidator shall also send copies of the report to the creditors and shareholders or notify them that
5 the report is available for review and copying. Upon receipt of the report, the Court shall
6 schedule a hearing, notice of which shall be sent to the creditors and shareholders by the
7 liquidator. At the hearing, the liquidator shall answer any questions of the Court or the creditors
8 or shareholders concerning the liquidation of the debtor.

9 SEC. 107. *Order removing the debtor from the list of registered entities at the Securities*
10 *and Exchange Commission.* – Upon determining that the liquidation has been completed
11 according to this Act and applicable law, the Court shall issue an order approving the report and
12 ordering the Securities and Exchange Commission to remove the debtor from the registry of legal
13 entities.

14 SEC. 108. *Termination of proceedings.* – Upon receipt of evidence showing that the
15 debtor has been removed from the registry of legal entities at the Securities and Exchange
16 Commission, it shall issue an order terminating the proceedings.

17 **CHAPTER V – PROCEEDINGS ANCILLARY TO**
18 **OTHER INSOLVENCY OR REHABILITATION PROCEEDINGS**

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

22 SEC. 109. *Provision of assistance.* – The Court shall issue orders, adjudicate claims, and
23 provide for other relief necessary to assist in the liquidation of a financial institution under
24 receivership established by a state –funded or state-mandated insurance system.

25 SEC. 110. *Application of relevant legislation.* – The liquidation of financial institutions
26 shall be determined by the relevant legislation. The provisions in this Act shall apply in a
27 suppletory manner.

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

SEC. 111. *Initiation of proceedings.* – The Court shall set a hearing in connection with an insolvency or rehabilitation proceeding in a foreign jurisdiction, upon the submission of a petition by the representative of the foreign entity that is the subject of the foreign proceeding.

SEC. 112. *Provision of relief.* – The Court may issue orders:

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

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

(j) providing other necessary relief.

SEC. 113. *Factors determining entitlement to relief.* – In determining whether to grant relief under this Sub-chapter, 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 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 VI – MISCELLANEOUS PROVISIONS

SEC. 114. *Separability provisions.* – 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.

1 SEC. 115. *Repealing Clause.* – The specified sections of the following Acts are hereby
2 deemed repealed:

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

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

5 (c) the Corporation Code, Section 119.

6 SEC. 116. *Amending Clause.* – Article 2237 of the Civil Code is hereby amended to read
7 as follows: “Insolvency and rehabilitation of juridical entities shall be governed by special laws;
8 the provisions of this Code shall apply in a suppletory manner. Insolvency of physical persons
9 shall be governed by special laws insofar as they are not inconsistent with this Code.”

10 SEC. 117. *Application to pending insolvency, suspension of payments and rehabilitation*
11 *cases.* – This Act shall govern all petitions filed after it takes effect, and also all further
12 proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except
13 to the extent that in the opinion of the Court their application would not be feasible or would
14 work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

15 SEC. 118. *Effective date.* – This Act will take effect immediately upon approval.

Approved.