

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

THIRTEENTH CONGRESS
First Regular Session



HOUSE BILL NO. 2204

Introduced by Representative Jaime C. Lopez

AN ACT
PROVIDING FOR THE RECOVERY AND LIQUIDATION OF FINANCIALLY
DISTRESSED JURIDICAL ENTITIES

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 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

the debtor and creditors in order to make rehabilitation possible without unduly stifling contractual rights and obligations.

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.

A handwritten signature in black ink, appearing to read "F. S. Linares", is written in a cursive style.

- a) incurred in connection with the filing of the petition;
 - b) arising from such filing of the petition in connection therewith, including those incurred for the rehabilitation or liquidation of the debtor;
 - c) incurred in the ordinary course of business after the filing of the petition; and
 - d) that are otherwise authorized or mandated under this act.
- 2) "Bankruptcy estate" or the estate of the insolvent debtor includes all the property and assets of the debtor as of the date the insolvency proceedings begins, plus the property and assets acquired by the rehabilitation receiver or liquidator after that date, as well as all other property and assets in which the debtor has an ownership interest, whether or not these property and assets are in the debtor's possession at the time of the commencement of the insolvency proceedings: *Provided*, that trust assets and bailment, and other property and assets of a third party that are in the possession of the debtor when the proceedings commence, are excluded from the bankruptcy estate.
 - 3) "Claim" shall include all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise. This includes claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority; *Provided*, that, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities.
 - 4) "Commencement of Proceedings" shall refer to the date on which the court issued the order commencing the proceedings, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings.
 - 5) "Creditor" shall refer to a natural or juridical person holding a claim against the debtor.
 - 6) "Date of liquidation" shall refer to the date on which the court issues an order converting the proceedings from rehabilitation to liquidation.
 - 7) "Debtor" shall mean, unless otherwise expressly excluded in this Act, any partnership, association, or corporation, whether stock or non-stock, on whose behalf a petition has been filed under this Act.
 - 8) "Encumbered property" shall refer to movable or immovable property over which a lien exists.

- 1 9) "General unsecured creditor" shall refer to a creditor whose claim or a portion
2 thereof is neither secured, preferred, nor subordinated under this Act.
- 3 10) "Involuntary proceedings" shall refer to proceedings initiated by creditors.
- 4 11) "Lien" shall refer to a statutory or consensual claim or charge on movable or
5 immovable property that gives the creditor the right to resort to such property
6 for the payment of a debt secured by such lien.
- 7 12) "Officer" shall refer to an individual holding a management position described
8 in or contemplated by a juridical entity's articles of incorporation, by-laws or
9 equivalent documents, except for the corporate secretary, the assistant corporate
10 secretary, and the external auditor.
- 11 13) "Ownership interest" shall refer to the ownership interest of third parties in
12 property held by the debtor, including those covered by trust receipts or
13 assignments of receivables.
- 14 14) "Party to the proceedings" may refer to the debtor, a creditor, the unsecured
15 creditors' committee, a stakeholder, a party with an ownership interest in
16 property held by the debtor, a secured party, the rehabilitation receiver,
17 liquidator, or any other juridical or natural person who stands to be benefited or
18 injured by the outcome of the proceedings and whose notice of appearance is
19 accepted by the court.
- 20 15) "Possessory lien" shall refer to a lien on property the possession of which has
21 been transferred to the creditor or a representative or agent thereof.
- 22 16) "Proceedings" shall refer to judicial proceedings commenced by the court's
23 acceptance of a petition filed under this Act.
- 24 17) "Property of others" shall refer to property held by the debtor in which other
25 persons have an ownership interest.
- 26 18) "Publication notice" shall refer to notice through publication in a newspaper of
27 general circulation in the Philippines on a business day for two consecutive
28 weeks.
- 29 19) "Rehabilitation Receiver" shall refer to the person, or persons, natural or
30 juridical, appointed by the court pursuant to section 22 of this act and which
31 shall have the functions and duties enumerated in sections 46 and 47 hereof.
- 32 20) "Secured claim" shall refer to a claim secured by a lien.
- 33 21) "Secured creditor" shall refer to a creditor whose claim is secured by a lien.

1 22) “Secured party” shall refer to a secured creditor or the agent or representative of
2 such secured creditor.

3 23) “Stakeholder” shall refer, in addition to a holder of shares of a corporation, to a
4 member of a non-stock corporation or association, or a partner in a partnership.

5 24) “Unsecured claim” shall refer to a claim not secured by a lien.

6 25) “Unsecured creditor” shall refer to a creditor with an unsecured claim.

7 26) “Voluntary proceedings” shall refer to proceedings initiated by the debtor.

8 27) “Voting creditor” shall refer to a creditor that is a member of a class of creditors,
9 the consent of which is necessary for the approval of a rehabilitation plan under
10 this Act.

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

13 For purposes of this section:

14 1. “Bank” shall refer to any bank or quasi-bank that is potentially or actually
15 subject to conservatorship, receivership, or liquidation proceedings under the
16 New Central Bank Act or successor legislation.

17 2. “Insurance company” shall refer to any insurance company that is subject to
18 insolvency proceedings under the Insurance Code (PD 1460) or successor
19 legislation.

20 3. “Registered securities market participant” shall refer to a registered exchange,
21 broker, dealer, underwriter, transfer agent, or any other juridical person
22 transacting securities that is subject to registration with, and regulation by, the
23 Securities and Exchange Commission pursuant to the Securities Regulation
24 Code and other related laws.

25 4. “Cooperatives” whose rehabilitation, liquidation and dissolution are made
26 subject to the Cooperatives Code.

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

33 SEC. 7. *Power of court.* – Upon motion by any party to the proceedings, or *motu*
34 *proprio*, the court may issue any order or judgment that is necessary to carry out the

1 provisions in this Act. Every order issued pursuant to this law or its implementing rules
2 and regulations is immediately executory. An appeal from such order shall not stay the
3 execution thereof unless restrained by the Court of Appeals or the Supreme Court.

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

- 11 1. there was commingling in fact of assets and liabilities of the debtor and the
12 related enterprise prior to the commencement of the proceedings;
- 13 2. the debtor and the related enterprise have common creditors and it will be
14 more convenient to treat them together rather than separately;
- 15 3. the related enterprise voluntarily accedes to join the debtor as party petitioner
16 and to commingle its assets and liabilities with the debtor's; and
- 17 4. the consolidation of assets and liabilities of the debtor and the related
18 enterprise is beneficial to all concerned and promotes the objectives of
19 rehabilitation.

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

22 SEC. 9. *Required service on parties.* – Pleadings and any other paper filed with the
23 court shall be deemed served on the creditors if delivered to the rehabilitation receiver or
24 liquidator that is appointed pursuant to this Act. Service upon stakeholders shall be
25 deemed complete if received by the official authorized to accept service for the debtor.
26 Service upon employees shall be deemed complete if received by an authorized
27 representative of the union or a designated representative of the employees, and by
28 posting a notice of such service in bold letters at a conspicuous place in the premises of
29 the business establishment: *Provided, however,* That pleadings concerning property of the
30 debtor shall additionally be served on each party having an ownership interest in or lien
31 against the property that is the subject of the dispute: *Provided, further,* That a pleading
32 concerning a particular claim against the debtor shall be served on each party to the 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 SEC. 10. *Collective decision-making of creditors.* – Unless specifically stated
5 otherwise in this Act, any provision in this Act that refers to approval, rejection, or other
6 collective action by the creditors (or to a class or sub-group of a class thereof) shall refer
7 to the results of a process by which more than half of the creditors (or a class or a sub-
8 group of a class thereof) have manifested such a decision either through affidavits or the
9 signed minutes of a meeting. The votes of the creditors for such decisions shall be
10 calculated solely according to amount of claim as valued as of the commencement date
11 unless specifically stated otherwise in this Act.

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

16
17 SEC. 12. *Creditors' representatives.* – Creditors may designate representatives to
18 vote or otherwise act on their behalf by filing notice of such representation with the court
19 and serving a copy on the rehabilitation receiver or liquidator.

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

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

31 The court shall determine the extent of the liability of a director or an officer
32 under this Section. In this connection, the court shall consider the amount of the
33 shareholding or equity interest of such director or officer, the degree of control of such

1 director or officer over the debtor, and the extent of the involvement of such director or
2 debtor in the actual management of the operations of the debtor.

3 SEC. 14. *Authorization to exchange debt for equity.* – Notwithstanding applicable
4 banking legislation, any bank, whether universal or not, may acquire and hold an equity
5 interest or investment in a debtor or its subsidiaries when conveyed to such bank in
6 satisfaction of debts pursuant to a rehabilitation or liquidation plan approved by the court:
7 *Provided*, That such ownership shall be subject to the ownership limits applicable to
8 universal banks for equity investments and: *Provided further*, That any equity investment
9 or interest acquired or held pursuant to this Section shall be disposed by the bank within a
10 period of five (5) years or as may be prescribed by the Monetary Board.

11 CHAPTER II --- INITIATION OF PROCEEDINGS

12 Sub-Chapter 2. Voluntary Proceedings

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

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

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

29 SEC. 17. *Commencement of proceedings.* – Proceedings shall commence upon the
30 court's issuance of an order finding the petition and attachments to be sufficient in form
31 and substance. Such an order, which must be issued no later than five (05) working days
32 after the filing of the petition, shall include the elements set forth in section 22 of this Act.
33 If the court finds the petition not fully sufficient in form and substance, it may, in its sole

discretion, require the petitioner to file within a reasonable time such documents as may be necessary to put the petition in proper order. In such case the five (05) working days Provided above for the issuance of the commencement order shall be reckoned from the date such requirement is satisfied.

Sub-Chapter 3. Involuntary Proceedings

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

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

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

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

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

SEC. 21. *Basis for commencement of involuntary proceedings.* – The court shall order the commencement of involuntary proceedings upon determining that the debtor is or will be unable to meet its debts as they come due or has or will imminently become

1 insolvent. Upon establishment of the condition in sub-section (1) of Section 18 of this
2 Act, there shall be a disputable presumption that the debtor cannot meet its debts as they
3 come due. The order containing the court's finding shall also include the elements set
4 forth in Section 22 of this Act.

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

7 **Sub-Chapter 4. The Debtor Under Proceedings**

8 **SEC. 22. *Issuance of a commencement order.*** – If the court finds the petition to be
9 sufficient in form and substance, it shall issue a commencement order which shall:

- 10 1. identify the debtor, its principal activities, and its address;
- 11 2. state the grounds for initiating the proceedings;
- 12 3. state the relief sought under this act and any requirement or procedure
13 particular to the relief sought;
- 14 4. state the legal effects of the commencement of proceedings, including those
15 mentioned in section 24 hereof;
- 16 5. appoint a rehabilitation receiver, or liquidator when appropriate who shall
17 exercise such powers and duties defined in this act as well as the procedural
18 rules that the Supreme Court will promulgate;
- 19 6. summarize the requirements and deadlines for creditors to establish their
20 claims against the debtor;
- 21 7. direct the bureau of internal revenue to file and serve on the debtor its
22 comment on or opposition to the petition or its claim/s against the debtor
23 under such procedures as the Supreme Court may hereafter provide;
- 24 8. indicate the location or locations at which documents regarding the debtor and
25 the proceedings under this act may be reviewed and copied; and
- 26 9. set the case for an initial hearing within a period of not more than sixty (60)
27 days from the date of filing of the petition for the purpose of determining
28 whether there is substantial likelihood for the debtor to be rehabilitated.

29 **SEC. 23. *Duration of commencement order.*** The commencement order, which shall
30 be published once a week for two (02) consecutive weeks in a newspaper of general
31 circulation in the Philippines, beginning not later than seven (07) days after the issuance
32 of the commencement order, shall be effective for an initial period of ninety (90) days
33 from the date of filing of the petition, extendible for a maximum period of sixty (60) days

1 for meritorious reasons. It shall automatically be dissolved without need of court action
2 upon the expiration of said initial period or extended period, as the case may be, unless
3 the court gives due course to the petition within said period on a finding that there is
4 substantial likelihood for the debtor to be rehabilitated. If the court does not give due
5 course to the petition, it shall order the dismissal of the petition or the conversion of the
6 proceedings to dissolution and liquidation proceedings under Sub-Chapter 4 of Chapter
7 IV of this Act.

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

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

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

- 29 1. vest the rehabilitation receiver with all the powers and functions Provided for
30 in this act, such as the right to review and obtain all records to which the
31 debtor's management and directors have access, including bank accounts of
32 whatever nature of the debtor, subject to the approval by the court of the
33 performance bond filed by the rehabilitation receiver;

- 1 2. suspend all legal and other proceedings for the enforcement of claims of
- 2 whatever nature and kind against the debtor subject to the provisions of
- 3 sections 26 and 27 hereof;
- 4 3. prohibit the debtor from selling, encumbering, transferring or disposing in any
- 5 manner any of its properties except in the ordinary course of business;
- 6 4. prohibit the debtor from making any payment of its liabilities outstanding as of
- 7 the commencement date, except upon the approval of the court upon motion
- 8 duly filed for the purpose;
- 9 5. suspend all actions to enforce any judgment against the debtor;
- 10 6. prohibit, or otherwise serve as the legal basis for rendering null and void the
- 11 results of, any extra-judicial activity or process to seize property, sell
- 12 encumbered property, or otherwise attempt to collect on or enforce a claim
- 13 against the debtor after the commencement date unless otherwise allowed in
- 14 this act subject to the provisions of section 29 hereof;
- 15 7. serve as the legal basis for rendering null and void any setoff after the
- 16 commencement date of any debt owed to the debtor by any of the debtor's
- 17 creditors;
- 18 8. serve as the legal basis for rendering null and void the perfection of any lien
- 19 against the debtor's property after the commencement date; and
- 20 9. consolidate the resolution of all legal proceedings by and against the debtor to
- 21 the court: *Provided, however,* that the court may allow the continuation of
- 22 cases in other courts where the debtor had initiated the suit.

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

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

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

33 SEC. 25. *Exceptions to section 24.* – The provisions of section 24 of this Act shall
34 not apply to the actions of a licensed broker or dealer to sell pledged securities of a debtor

1 pursuant to a securities pledge or margin agreement for the settlement of securities
2 transactions in accordance with the provisions of the securities regulation code and its
3 implementing rules and regulations.

4 SEC. 26. *Non-applicability of suspension order to appeals and specialized*
5 *proceedings.* – The suspension order shall not apply to appeals cases filed at the Court of
6 Appeals or the Supreme Court prior to the commencement date: *Provided,* That the
7 execution of any judgment resulting from such appeal shall be referred to the court
8 presiding over the rehabilitation proceedings for appropriate action.

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

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

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

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

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

3. undertake any other disposition of the property as may be beneficial for the rehabilitation of the debtor.

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

1. if such are in the interest of administering the debtor and facilitating the preparation and implementation of a rehabilitation plan;
2. in order to provide a substitute lien, mortgage or pledge of property under this Act;
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 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.

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

3 SEC. 32. *Treatment of rapidly depreciating property.* – Upon the application of a
4 party holding a lien against or ownership interest in property held by the debtor that is
5 subject to potentially rapid depreciation, the court shall, after notice and hearing, order the
6 debtor or rehabilitation receiver to take reasonable steps necessary to prevent the
7 depreciation. If depreciation cannot be avoided and such depreciation is jeopardizing the
8 security or property interest of the secured creditor or owner, the court shall:

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

22
23 SEC. 33. *Lack of adequate protection.* The court, on motion or *motu proprio*, may
24 terminate, modify or set conditions for the continuance of suspension of payment, or
25 relieve a claim from the coverage thereof, upon showing that a creditor does not have
26 adequate protection over property securing its claim, or the debtor's secured obligation is
27 more than the fair market value of the property subject to stay, and such property is not
28 necessary for the rehabilitation of the debtor.

29 For purposes of this section, the creditor shall lack adequate protection if it can be
30 shown that:

- 31 1. the debtor fails or refuses to honor a pre-existing agreement with the creditor
32 to keep the property insured;
- 33 2. the debtor fails or refuses to take commercially reasonable steps to maintain
34 the property; or

1 3. the property has depreciated to an extent that the creditor is undersecured.

2 Upon showing of a lack of protection, the court shall order the debtor or the
3 rehabilitation receiver to make arrangements to provide for the insurance or maintenance
4 of the property; or to make payments or otherwise provide additional or replacement
5 security such that the obligation is fully secured. If such arrangements are not feasible, the
6 court may modify the stay order to allow the secured creditor lacking adequate protection
7 to enforce its security claim against the debtor; *Provided however*, that the court may
8 deny the creditor the remedies in this paragraph if the property subject of the enforcement
9 is required for the rehabilitation of the debtor.

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

18
19 SEC. 35. *Post-commencement interest.* – The rate and term of interest, if any, on
20 secured and unsecured claims shall be determined and Provided for in the approved
21 rehabilitation plan.

22 SEC. 36. *Post-commencement loans.* – With the approval of the court upon the
23 recommendation of the rehabilitation receiver, the debtor, in order to enhance its
24 rehabilitation, may:

- 25 1. enter into credit arrangements, the payments under which shall be considered
26 an administrative expense; or
27 2. enter into credit arrangements, secured by mortgages of its unencumbered
28 property or secondary mortgages of encumbered property with the approval of
29 senior secured parties with regard to the encumbered property.

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

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

13 **Sub-Chapter 5. Submission and Determination of Claims**

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

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

29
30 **Sub-Chapter 6. The Rehabilitation Receiver, The Management**
31 **Committee And The Creditors' Committee**
32

1 SEC. 41. *Who may serve as a rehabilitation receiver.* – Any qualified
2 individual may serve as a rehabilitation receiver. A group of individuals who together are
3 qualified, or a juridical entity with employees who together are qualified may serve as a
4 rehabilitation receivership committee or as a rehabilitation receiver, respectively. The
5 qualifications and disqualifications of the rehabilitation receiver shall be set forth in
6 procedural rules taking into consideration the nature of the business of the debtor and the
7 need to protect the interest of all stakeholders concerned.

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

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

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

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

- 1 1. incompetence, gross negligence, failure to perform or failure to exercise the
- 2 proper degree of care in the performance of his duties and powers;
- 3 2. lack of a particular or specialized competency required by the specific case;
- 4 3. illegal acts or conduct in the performance of his duties and powers;
- 5 4. lack of qualification or presence of any disqualification;
- 6 5. conflict of interest that arises after his appointment; and
- 7 6. manifest lack of independence that is detrimental to the general body of the
- 8 stakeholders.
- 9

10 SEC. 45. *Compensation and terms of service.* – The rehabilitation receiver
11 and his direct employees or independent contractors shall be entitled to compensation for
12 reasonable fees and expenses from the debtor according to the terms approved by the
13 court after notice and hearing. Prior to such hearing, the rehabilitation receiver and his
14 direct employees shall be entitled to reasonable compensation based on *quantum meruit*.
15 Such costs shall be considered administrative expenses.

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

- 20 1. actual or imminent danger of dissipation, loss, wastage or destruction of the
- 21 debtor's assets or other properties;
- 22 2. paralyzation of the business operations of the debtor;
- 23 3. gross mismanagement of the debtor; or
- 24 4. gross or willful violation by management of this act.

25 SEC. 47. *Role of the Management Committee.* – The management committee
26 shall take the place of the management and the governing body of the debtor and assume
27 their rights and responsibilities.

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

30 SEC. 48. *Qualifications of members of the management committee.* – The
31 qualifications and disqualifications of the members of the management committee shall
32 be set forth in the procedural rules taking into consideration the nature of the business of
33 the debtor and the need to protect the interest of all stakeholders concerned.

1 SEC. 49. *Employment of professionals.* - Upon approval of the court, and
2 after notice and hearing the rehabilitation receiver or management committee may
3 employ specialized professionals and other experts to assist each in the performance of
4 their duties. Such professionals and other experts shall be considered either employees or
5 independent contractors of the rehabilitation receiver or management committee, as the
6 case may be. The qualifications and disqualifications of the professionals and experts
7 may be set forth in procedural rules taking into consideration the nature of the business of
8 the debtor and the need to protect the interest of all stakeholders concerned.

9 SEC. 50. *Conflicts of interest.* - No person may be appointed as a
10 rehabilitation receiver, member of a management committee, or be employed by the
11 rehabilitation receiver or the management committee if he has a conflict of interest.

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

15 Any rehabilitation receiver, member of the management committee or persons
16 employed or contracted by them possessing any conflict of interest shall disclose it to the
17 court. Any party to the proceeding adversely affected by the appointment of any person
18 with a conflict of interest to any of the positions enumerated above may however waive
19 his right to object to such appointment, and if the waiver is unreasonably withheld, the
20 court may disregard the conflict of interest taking into account the general interest of the
21 stakeholders.

22 SEC. 51. *Immunity.* - The rehabilitation receiver and all persons employed
23 by him, and the members of the management committee and all persons employed by it
24 shall not be subject to any action, claim or demand in connection with any act done or
25 omitted to be done by them in good faith in connection with the exercise of their powers
26 and functions under this act or other actions duly approved by the court.

27 SEC. 52. *Creditors' committee.* - After the creditors' meeting called
28 pursuant to section 57, the creditors belonging to a class may formally organize a
29 committee among themselves. In addition, the creditors may as a body, agree to form a
30 creditors' committee composed of a representative from each class of creditors, such as
31 the following:

- 32 a) secured creditors;
- 33 b) unsecured creditors;
- 34 c) trade creditors and suppliers; and

1 d) employees of the debtor.

2
3 In the election of the creditors' representatives, the rehabilitation receiver or his
4 representative shall attend such meeting and extend the appropriate assistance as may be
5 defined in the procedural rules.

6 SEC. 53. *Role of creditors' committee.* – The creditors' committees when
7 constituted pursuant to section 52 shall assist the rehabilitation receiver in communicating
8 with the creditors and shall be the primary liaison between the rehabilitation receiver and
9 the creditors. The creditors' committees cannot exercise or waive any right or give any
10 consent on behalf of any creditor unless specifically authorized in writing by such
11 creditor. The creditors' committees may be authorized by the court or by the
12 rehabilitation receiver to perform such other tasks and functions as may be defined by the
13 procedural rules in order to facilitate the rehabilitation process.

14 **Sub-Chapter 4. Termination of Proceedings**

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

- 20 1. dismissal of the petition by the court;
- 21 2. the debtor fails to submit a rehabilitation plan;
- 22 3. under the rehabilitation plan submitted by the debtor, there is no
23 substantial likelihood that the debtor can be rehabilitated within a
24 reasonable period;
- 25 4. the rehabilitation plan or its amendment is approved by the court, but in
26 the implementation thereof, the debtor fails to perform its obligations
27 thereunder, or there is a failure to realize the objectives, targets or goals set
28 forth therein, including the timelines and conditions for the settlement of
29 the obligations due to the creditors and other claimants;
- 30 5. the commission of fraud in securing the approval of the rehabilitation plan
31 or its amendment; and
- 32 6. other analogous circumstances as may be defined by the rules of
33 procedure.

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

- 3 1. the discharge of the rehabilitation receiver;
- 4 2. the lifting of the stay order and any other court order holding in abeyance
5 any action for the enforcement of a claim against the debtor;
- 6 3. reinstate the debtor to the status of a corporation which is operating in the
7 normal course of business and not undergoing rehabilitation proceedings.

8 *Provided, however,* that if the termination of proceedings is due to failure of rehabilitation
9 or dismissal of the petition for reasons other than technical grounds, the proceedings shall
10 be immediately converted to liquidation as Provided in section 78 (2).

11 **CHAPTER IV --- REMEDIES**

12 **Sub-Chapter 1. Court-Supervised Rehabilitation**

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

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

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

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

25 SEC. 57. *Initial meeting of debtor and creditors.* – Within forty-five (45)
26 days of the commencement date or the date of conversion (whichever is later), the
27 rehabilitation receiver shall hold a meeting of creditors, the time and place of which shall
28 be established in the order. The debtor shall be required to send to the meeting an officer
29 (or officers) knowledgeable of its affairs to answer the creditors' questions under oath.
30

31 SEC. 58. *Methods of rehabilitation.* – Any lawful actions that establish a
32 means of meeting the obligations of the debtor as adjusted by a rehabilitation plan may be

utilized under this Act. Particular methods of rehabilitation may be set forth in procedural rules.

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

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

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

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

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

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

1. contain information sufficient to give the various classes of creditors and stockholders a reasonable basis for determining whether supporting the plan is in their financial interest when compared to the liquidation of the debtor;
2. establish classes of voting creditors as described in Section 62 of this Act;
3. establish sub-classes of voting creditors if prior approval has been granted by the court;
4. specify the treatment of each class or sub-class described in sub-sections (1) and (2);

- 1 5. provide for equal treatment of all unpaid claims within a class or sub-class
- 2 unless the particular creditor voluntarily agrees to less favorable treatment;
- 3 6. maintain the security interest of secured creditors unless such has been waived
- 4 or modified voluntarily;
- 5 7. disclose all payments to creditors for pre-commencement debts made during
- 6 the proceedings and the justifications thereof;
- 7 8. describe the claims against the debtor still subject to dispute and the
- 8 provisioning of funds to account for appropriate payments should the claim be
- 9 ruled valid or its amount adjusted;
- 10 9. require the debtor and its counter-parties to adhere to the terms of all contracts
- 11 that the debtor has chosen to confirm;
- 12 10. arrange for the payment of all outstanding administrative expenses as a
- 13 condition to the plan's approval unless such condition has been waived in
- 14 writing by the creditors concerned;
- 15 11. arrange for the payment of all outstanding taxes and assessments, or an
- 16 adjusted amount pursuant to a compromise settlement with the Bureau of
- 17 Internal Revenue or other applicable tax authorities;
- 18 12. include a certified copy of a certificate of tax clearance or evidence of a
- 19 compromise settlement with the Bureau of Internal Revenue;
- 20 13. include a valid and binding resolution of a meeting of the debtor's
- 21 stockholders to increase the shares by the required amount in cases where the
- 22 plan contemplates an additional issuance of shares by the debtor;
- 23 14. state any rehabilitation covenants of the debtor, the breach of which shall be
- 24 consider a material breach of the plan;
- 25 15. state the compensation and status, if any, of the rehabilitation receiver after the
- 26 approval of the plan;
- 27 16. include a legal opinion of the lawyer of the rehabilitation planner certifying
- 28 that the transactions and arrangements of the plan are consistent with the law;
- 29 and
- 30 17. include written evidence of consent to the plan by each class or sub-class of
- 31 voting creditors established by the plan or written evidence of consent to the
- 32 plan by eighty percent (80%) of all of the voting creditors.

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

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

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

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

20
21 In all cases where the vote of the stockholders of the debtor is necessary for the
22 implementation of the plan, the total claims of the debtor's employees and other
23 unsecured creditors as acknowledged by the rehabilitation receiver shall be considered as
24 part of the subscribed capitalization and added thereto and the debtor's employees and the
25 other unsecured creditors shall be allowed to vote with the stockholders of the debtor to
26 the extent of their respective claims, which shall be converted for this purpose only to
27 their equivalent share holdings based on the par value of the debtor's share. The privilege
28 extended to employees and other unsecured creditors under this section is only for voting
29 purposes when necessary for the implementation of the rehabilitation plan, and shall in no
30 way make such employees and unsecured creditors as stockholders of the debtor.

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

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

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

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

- 10 1. the plan conforms to the requirements of Section 61 of this Act;
- 11 2. the plan has been disclosed to creditors and stockholders according to the
- 12 provisions in Section 63 of this Act; and
- 13 3. the plan is supported (a) by the majority of each class or sub-class of voting
- 14 creditors established in the plan, or (b) eighty percent (80%) of all of the
- 15 voting creditors.

16
17 SEC. 66. *Submission of objections.* – Any creditor or stockholder, within
18 thirty (30) days from the second date of publication notice of the filing of the plan and its
19 availability, may submit to the court an objection to the plan. Objections to a
20 rehabilitation plan shall be limited to the following:

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

28 Copies of any objection to the plan shall be served on the debtor, the rehabilitation
29 receiver and the largest seven (7) secured creditors and largest seven (7) general
30 unsecured creditors who support the plan. Within five days of receipt, the rehabilitation
31 receiver shall make available copies of the objection to the remaining parties to the
32 proceedings.

33 SEC. 67. *Hearing on objection.* – If objections have been submitted during
34 the relevant period, the court shall issue an order setting the time and date of the hearing

1 or hearings on the objections and shall provide a copy of the order to the rehabilitation
2 receiver. The rehabilitation receiver shall within five (5) days of receipt, deliver a copy
3 of the hearing order to each party to the proceedings and provide publication notice of the
4 hearing.

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

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

13
14 The court may approve a plan notwithstanding unresolved disputes over claims if the
15 plan has set aside reserves adequate for paying such claims.

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

18 SEC. 69. *Effect of approval.* – Approval of the plan shall discharge the
19 financial payment obligations of the debtor unless otherwise allowed to the extent called
20 for by the plan. Contracts and other arrangements between the debtor and its creditors
21 shall be deemed to continue to apply to the extent that they do not conflict with the
22 payment provisions of the plan. Any compromises on amounts payable by the debtor
23 shall be binding on all creditors regardless of whether the plan is successfully
24 implemented. Claims arising after approval of the plan that are otherwise not treated by
25 the plan are not subject to any suspension order.

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

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

32 SEC. 70. *Liability of general partners of a partnership for unpaid balances*
33 *under an approved plan.* – The approval of the plan shall not affect the rights of creditors

1 to pursue actions against the general partners of a partnership to the extent they are liable
2 under relevant legislation for the debts thereof.

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

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

11 SEC. 73. *Discharge of the rehabilitation receiver.* – Upon issuance of
12 approval of the rehabilitation plan, the rehabilitation receiver shall provide a final report
13 and accounting to the court. Unless the plan specifically requires and describes the role
14 of the rehabilitation receiver after the approval of the plan, the court shall discharge the
15 rehabilitation receiver of his duties.

16 SEC. 74. *Breach of a plan.* – Upon a failure by the debtor to abide by the
17 rehabilitation covenants of a confirmed plan, any creditor or other affected party may
18 submit to the court a notice of breach of a confirmed plan. The court shall transmit the
19 notice to the debtor and the rehabilitation receiver no later than five days after receipt of
20 the submission, and schedule a hearing on the matter no later than ten days after
21 submission of the notice.

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

- 23 1. issue an order directing that the breach be cured within a specified period of
24 time, failing which the case may be converted to a liquidation;
- 25 2. issue an order converting the case to a liquidation;
- 26 3. allow the debtor submit amendments to the plan, the approval of which shall
27 be governed by the requirements for the approval of a plan under this Sub-
28 Chapter; or
- 29 4. issue any other order to remedy the breach consistent with the present
30 regulation, other applicable law, and the best interests of the creditors.

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

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

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

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

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

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

23 SEC. 78. *Requirements for initiation.* – Dissolution and liquidation proceedings
24 shall commence either:

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

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

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

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

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

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

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

1 SEC. 83. *Compensation of the liquidator.* – The liquidator’s fees and expenses
2 shall be paid from the cash resources of the debtor or from the proceeds of the sale of the
3 debtor’s property and shall be considered an administrative expense. The level of
4 compensation shall be sufficient to attract competent individuals to serve as
5 administrators. The procedures for determining the liquidator’s compensation and the
6 timing of its disbursement shall be established by procedural rules.

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

19 A sale of encumbered property according to the provisions of this Act shall
20 operate to divest the rights in the property of all secured parties and to vest their rights in
21 the purchaser subject to such rights of redemption as may be allowed by law: *Provided,*
22 That all rights of redemption by the debtor shall be deemed to have been conveyed with
23 the debtor’s rights to the property.

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

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

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

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

11 SEC. 87. *Priority of unsecured claims.* – The liquidator shall distribute the
12 proceeds from the sale of unencumbered property and shall distribute surpluses from the
13 sale of encumbered property according to the following order:

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

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

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

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

4 **CHAPTER V --- PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR**
5 **REHABILITATION PROCEEDINGS**

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

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

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

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

16 SEC. 92. *Initiation of proceedings.* – The court shall set a hearing in connection
17 with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction,
18 upon the submission of a petition by the representative of the foreign entity that is the
19 subject of the foreign proceeding.

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

- 21 1. suspending any actions to enforce claims against the entity or otherwise
22 seize or foreclose on property of the foreign entity located in the
23 Philippines;
- 24 2. requiring the surrender of property of the foreign entity to the foreign
25 representative; or
- 26 3. providing other necessary relief.

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

- 29 1. the protection of creditors in the Philippines and the inconvenience in pursuing
30 their claims in a foreign proceeding;
- 31 2. the just treatment of all creditors through resort to a unified insolvency or
32 rehabilitation proceeding;
- 33 3. whether other jurisdictions have given recognition to the foreign proceeding;

4. 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
5. the extent that the foreign proceeding has recognized and shown deference to proceedings under this Act and previous legislation.

CHAPTER VI --- MISCELLANEOUS PROVISIONS

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

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

SEC. 96. *Separability provision.* – 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.

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

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

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

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

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

18 *SEC. 102. Effectivity date.* – This Act shall take effect thirty (30) days after its
19 publication in the Official Gazette or in two (2) newspapers of general circulation.
20

21 Approved,