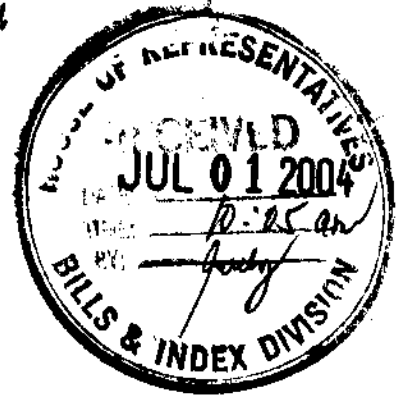


Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 127



Introduced by Representative JOEY SARTE SALCEDA

EXPLANATORY NOTE

For better or for worse, the world is becoming a smaller and less safe place for Philippine businesses. While many businesses will respond to these greater challenges and prosper, some will find themselves with shrinking markets, increased debt, and difficult choices. The various stakeholders in a distressed company face tough choices too. While the creditors, workers, and shareholders want the company to thrive, they also have their own self-interest in mind. Creditors want their loans repaid. Workers want to maintain workforce levels. Shareholders want to avoid dilution of ownership.

The responsibility for resolving these conflicts while trying to save an ailing business has fallen on the Securities and Exchange Commission (SEC). The legislative base on which SEC has adjudicated these cases is the Insolvency Law, which passed in 1909, and the suspension of payments and rehabilitation provisions in Presidential Decree 902-A. The Insolvency Law is sorely out-dated and P.D. 902-A is skeletal and confusingly written.

While SEC has recently adopted rules for governing petitions for suspension of payment and rehabilitation, it nevertheless has remained hampered by this inadequate legislative base.

Further, and perhaps of most immediate concern, the recently passed Securities Regulation Code (Act 8799) will transfer SEC's quasi-judicial jurisdiction over suspension of payments cases to the Regional Trial Courts. These courts, lacking a set of procedural rules to govern these cases, may have no choice but to apply the antiquated procedures of the Insolvency Law. This would radically change the rules of the game for companies that need the relief offered by rehabilitation and suspension of payments.

In short, the Philippine has long needed to modernize and clarify its rules for rehabilitation and insolvency. This need has now become urgent with transfer of SEC's quasi-judicial jurisdiction over suspension payments and rehabilitation cases to the Regional Trial Courts.

The attached bill entitled the Corporate Recovery Act, or the CRA, represents a comprehensive approach to the complex problems faced by enterprises when they, for whatever reason, can no longer pay their debts as they come due. It combines the creation substantive rights with relatively detailed

procedural guidelines that move cases through court-supervised proceedings quickly. It emphasizes the survival of the enterprise while at the same time keeping paramount the rights of creditors with duly registered liens against the enterprise's assets.

The CRA clarifies the rights of debtors and creditors to initiate formal debt relief proceedings. A financially distressed enterprise may petition the court if it cannot pay its debts as they are coming due, regardless if it is insolvent. By contrast, P.D. 902-A allows SEC to take jurisdiction only when the distressed enterprise's assets exceed its liabilities. This has often led to time consuming litigation over whether the debtor is solvent or not at the onset of the proceedings. In the meantime, the debtor languishes. The CRA avoids this problem by allowing enterprises in the door regardless of their solvency or insolvency.

Once a case begins, the CRA offers four different means of relief: Pre-Negotiated Rehabilitation, Fast Track Rehabilitation, Court-Supervised Rehabilitation, and Dissolution-Liquidation.

Pre-Negotiated Rehabilitation

In the wake of the Asian crisis, banks have been diligently working with debtors to restructure loans whose payment terms are no longer practical. Numerous such agreements have been reached over the past several years. Two obstacles, however, stand in the way of a successful "work out". The first could be called the "maverick creditor problem" (where one creditor seeks to lay claim on the debtor's assets while others negotiate). The other is the "free-riding creditor problem" (where a creditor refuses to compromise knowing that the other creditors will). Both problems arise often. They undermine the trust and patience needed to collectively restructure an enterprise's debts.

Pre-Negotiated Rehabilitation under CRA solves these problems. It allows a debtor that has worked out a rehabilitation plan with its creditors to go to court for official approval. While the plan awaits approval (expected time would be several weeks to hear technical objections, etc.), the claims and lawsuits of creditors, such as that of the maverick creditor mentioned above, are suspended. When the court approves that plan, all the creditors are bound by it, even the minority creditors who were trying to free ride on the good faith negotiations of the other creditors.

This remedy would be open to any enterprise that can develop a rehabilitation plan that is supported by a majority of its creditors. The experience of other countries, as well as some limited experience in the Philippines indicates that it is the most efficient and likely-to-succeed route to rehabilitation. It is thus one of the mainstays of the proposed legislation.

Fast-Track Rehabilitation

But what happens if the debtor cannot develop a pre-negotiated rehabilitation plan? The usual result has been for the debtor to petition SEC to initiate suspension of payments or rehabilitation proceedings. While various SEC cases involving large industrial companies are moving forward, few would deny that it has been a grueling experience and that success is not necessarily assured.

The challenge of the traditional rehabilitation approach is that it tries to do two things at the same time: (1) to figure out how to fix the debtor's business, and (2) to determine who gets what out of the proceedings. This one-two combination is the reason why many rehabilitation fail. The parties to the proceeding, seeking to minimize their losses, have more than the long-term interest of the

enterprise in mind. The result is strategic bargaining, strategic lawsuits, and endless proceedings. And time, unfortunately, is the number one enemy of a successful outcome.

Fast-Track Rehabilitation under the proposed legislation stems from the assumption that the persons with the best incentives to fix an enterprise are owners with long-term outlook. These individuals will gain or lose depending on the ultimate outcome of the rehabilitation. To get to this point, Fast-Track Rehabilitation:

- creates a new, debt-free enterprise based on the assets of the debtor;
- transfers the shares of the new enterprise to the debtor in exchange for the debtor's assets;
- allows for the auctioning of the shares of the new enterprise with an eye toward maximizing revenues from the sale;
- gives shareholders and creditors of the debtor various preferred rights in bidding for the shares of the new enterprise if they so choose;
- allocates the proceeds from the share sales to creditors and shareholders of the debtor according to pre-established priorities.

Fast-Track Rehabilitation keeps the enterprise together (albeit under a new corporate entity) while significantly reducing its debt in a very short period of time. While there are no guarantees of success, the enterprise, under new corporate trappings and management, has a far better chance of rehabilitating itself under these circumstances rather than trying to do it through endless rehabilitation proceedings. Workers benefit from this. So do the high priority creditors.

The proposed legislation essentially makes Fast-Track Rehabilitation mandatory if the enterprise has not already petitioned for Pre-Negotiated Rehabilitation.

Court-Supervised Rehabilitation

As experienced in the Philippines and elsewhere teaches, traditional rehabilitation, even under the most progressive legislation, is drawn out process with few guarantees of success. Nonetheless, the CRA does provide it as a form of relief. It is only available, however, to non-stock corporations, or in instances where the secured creditors submit a motion to the court to convert the proceedings from Fast-Track Rehabilitation.

The CRA allows for the drafting of a rehabilitation plan while claims of creditors are suspended. The creditors then decide to support the plan or not. If the majority of a particular class of creditors opposes the plan, the case is converted to liquidation.

Court-Supervised Rehabilitation under CRA differs from current practice in several respects. The CRA puts the onus on the shareholders (through the debtor's board of directors) in drafting and selling a rehabilitation plan. The shareholders have the most to win or lose depending on whether a plan is approved. They should be the ones to take the first crack at the plan. Further, while the shareholders can hire experts to help in formulating the plan, the cost of hiring such experts are borne by the shareholders rather than the creditors.

This is contrast with current practice where the interim rehabilitation negotiates and balances the competing demands of the creditors and the shareholders. While some individuals have been able to rise to this challenge, even they concede it is very difficult to wear several hats at once. It is better to split the job into two roles: the court-appointed administrator (called the "conservator") conserves the assets (for the general benefit of all creditors) while the shareholders and their rehabilitation planner make their pitch for adjusting creditor's claims, minimizing shareholder dilution, and saving the enterprise.

Dissolution-Liquidation

The proposed legislation makes Dissolution-Liquidation the relief of last resort. It will most often be used when other forms of relief fail or when a debtor seeks to liquidate itself when it has insufficient assets to cover its debts.

The liquidation proceedings under the CRA are rather straightforward. They closely resemble the approach currently adopted by SEC. The major change is the modification of the ranking and prioritization of creditors currently found in the Civil Code. Several practitioners and commentators have argued that the Civil Code rankings massively complicate both liquidations and rehabilitations.

Under the CRA, there are far fewer classes of creditors. In order to encourage sound and safe lending, registered lien holders would have a clear priority.

Conclusion

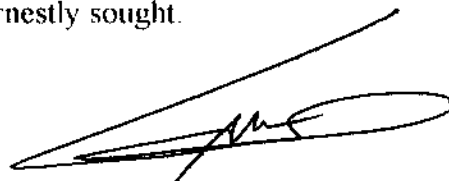
The CRA presents several options to a distressed enterprise. First, it gives it the chance to negotiate a rehabilitation plan agreed to by the majority of its creditors. Upon court approval, the plan would bind all creditors, even the dissenting ones.

If this effort fails, and an enterprise goes into formal rehabilitation proceedings, the CRA focuses on restructuring the claims against the enterprise while getting it out of debt quickly. The task of improving the enterprise's operations falls upon the new owners.

Traditional Court-Supervised Rehabilitation is available under the CRA, but only under limited circumstances, due to its inherent delay, cost, and risk. Finally, traditional dissolution and liquidation available, but only when a debtor voluntarily consents to it or when other rehabilitation approaches fail.

The CRA thus is both an evolution and an innovation in terms of current practice. It emphasizes workable solutions and de-emphasizes court-led approaches. Above all, it emphasizes the preservation of an enterprise while allowing its ownership to be restructured and its creditors to be treated fairly. In this sense, the CRA is pro-worker, pro-market, and pro-creditor at the same time.

From the foregoing, approval of this bill is earnestly sought.



JOEY SARTE SALCEDA

The Corporate Recovery Act

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Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

House Bill No. 127

Introduced by Representative JOEY SARTE SALCEDA

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

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

CHAPTER I -- GENERAL PROVISIONS

SECTION 1. *Title* -- This Act 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 can no longer pay its debts as they come due or when the debtor has become insolvent. Such resolutions shall respect the differing priorities amongst 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. *Definitions of Terms* -- As used in this Act the term:

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

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

(c) "Commencement of proceedings" shall refer to the date on which the Court issued the order commencing the proceedings.

(d) "Creditor" shall refer to a juridical entity or physical person holding a claim against the debtor.

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

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

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

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

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

(j) "Involuntary proceedings" shall refer to proceedings initiated by creditors.

(k) "Proceedings" shall refer to judicial proceedings commenced by the Court's 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 Court* -- Upon motion or motu proprio 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.

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

SEC. 8. *Substantive and Procedural Consolidation* -- Each juridical entity shall be considered in separate cases under the proceedings in this Act. The assets and liabilities of a debtor may not be commingled or aggregated with those of another under these proceedings: *Provided, however,* That the Court may allow for procedural consolidation of cases to allow for a more efficient and speedy disposition of proceedings under this Act.

SEC. 9. *Required Service on Parties* -- Service of pleadings and any other papers filed with the Court shall be deemed served on the creditors upon the service of such on the conservator or liquidator that is appointed pursuant to this Act. Service upon shareholders shall be deemed complete upon service on the official authorized to accept service for the debtor: *Provided, however,* That a party filing a pleading concerning a particular property interest of the debtor or a claim against the

debtor shall serve, in addition to the conservator or liquidator, the parties making the claim or having a particular ownership or security interest in the property that is the subject of the dispute.

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

SEC. 10. *Collective Decision-Making of Creditors and Shareholders* -- Any provision in this Act that refers to approval, rejection, or other collective action by the creditors (or to a class or sub-group of a class thereof) shall refer to the results of a process by which at least half of the creditors (or a class or a sub-group of a class thereof) have manifested such a decision either through affidavits or the signed minutes of a meeting. The means of counting creditors for such decisions shall be solely by amount of claim unless specifically stated otherwise in this Act. 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 distributes proceeds from the liquidation of a debtor under 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 cause 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;

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

(c) the interim financial statement as of the end of the month prior to the filing of the petition;

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

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

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

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

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

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

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

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

SEC. 15. Commencement of Proceedings -- Proceedings shall commence upon the Court's issuance of an order finding the petition and attachments to be reasonably sufficient in form and substance. Such an order shall include the elements set forth in Section 24 of this Act. It shall also, where applicable, require that the debtor provide documents not included with its petition within a reasonable time period.

Sub-Chapter 2. Involuntary Proceedings

SEC. 16. *Circumstances Necessary to Initiate Involuntary Proceedings* -- A creditor shall be entitled to initiate involuntary proceedings against a debtor if:

- (a) he and at least two other creditors of the debtor have undisputed or adjudicated claims, the required payments on which have remained unpaid for more than sixty (60) days; or
- (b) a creditor 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. 17. *Petition to Initiate Involuntary Proceedings* -- In order to establish an entitlement to relief under this Act, the creditor's petition shall:

- (a) identify the debtor, its principal activities, and its address;
- (b) state the circumstances sufficient to support a petition to initiate involuntary proceedings;
- (c) specifically state the relief sought under Chapter IV of this Act;

SEC. 18. *Preliminary Proceedings on the Sufficiency of a Petition* -- 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 regulated by the Rules of Court.

SEC. 19. *Basis for Initiating Involuntary Proceedings* -- The Court shall initiate 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 insolvent. Upon establishment of the condition in sub-section (a) of Section 16 of this Act, there shall be a disputable presumption that the debtor cannot meet its debts as they come due. The order containing the Court's finding shall also 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;
- 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;

(b) 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;

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

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

(e) 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;

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

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

(h) consolidate the resolution of all legal proceedings by and against the debtor to the Court: *Provided, however, That the Court may allow the continuation of cases in other courts where the debtor had initiated the suit.*

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

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

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

SEC. 21. Exception to Prohibition of Actions against the Debtor with regard to Securities -- The prohibition in Section 20 of this Act shall not apply to the actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement.

SEC. 22. Non-Applicability of Suspension Order to Appeals and Specialized Proceedings -- The suspension order shall not apply to appeals cases filed at the Court of Appeals or the Supreme Court prior to commencement of proceedings: *Provided, That the execution of any judgment resulting from such appeal or remand for further proceedings shall be directed to the Court.*

The Court may exclude from its suspension order cases pending or filed at a specialized court or quasi-judicial agency when it determines that the court or agency is capable of resolving the claim

more quickly, fairly, and efficiently than the Court: *Provided*, That the execution of any judgment of such court or agency shall be referred to the Court and shall be treated as a non-disputed claim.

SEC. 23. *Application of Suspension to Government Financial Institutions* — The provisions in the preceding Section shall apply to government financial institutions as creditors, notwithstanding provisions in their charters to the contrary.

SEC. 24. *Order Commencing Proceedings* -- The order commencing proceedings (either voluntary or involuntary) shall:

- (a) identify the debtor, its principle activities, and its address;
- (b) state the grounds for initiating the proceedings;
- (c) state the relief sought under this Act and any requirements or procedures particular to the relief sought;
- (d) state the legal effects of the commencement of the proceedings;
- (e) appoint a conservator, or liquidator when appropriate;
- (f) summarize the requirements and deadlines for creditors to establish their claims against the debtor;
- (g) indicate the location(s) at which documents regarding the debtor and the proceedings under this Act may be reviewed and copied.

The conservator shall publish the order in a newspaper of general circulation for two consecutive weeks, the date of the first publication to be no later than five business days after issuance of the order.

SEC. 25. *Property of the Debtor under the Control or Management of Third Parties* -- Third parties possessing or controlling property of the debtor may not sell or otherwise convey it to persons other than the debtor, unless otherwise specified by the conservator. Upon written request of the conservator and after payment of any claims secured by possessory pledges or mechanics' liens, such third parties shall transfer possession or control of such to the latter: *Provided, however*, That the conservator may arrange to have the third party continue to possess, manage, or dispose of property if such an arrangement would more likely preserve and/or increase the value of the property in question or the total value of the assets held by the debtor.

SEC. 26. *Unencumbered Property that may be Sold or otherwise Transferred during the Proceedings* -- The Court may rescind any transfers of the debtor's unencumbered property or encumbrances thereof by the debtor or its agents that occur after the commencement of the proceedings and are outside the ordinary course of business: *Provided, however*, That the following transactions may be implemented upon a decision of the Court, after notice and hearing:

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

(b) sales of the debtor's unencumbered property if such is in the interest of administering the debtor and facilitating the preparation and implementation of a rehabilitation plan;

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

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

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

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

SEC. 28. *Sale or Disposal of Encumbered Property or Property of Others in Trust or Otherwise held by the Debtor* -- No provision in this Act shall be read as to create a defense against estafa or other criminal charges or civil claims against persons responsible for the sale or disposal of encumbered property or property of others held by the debtor. Provided, however, that the conservator may sell or dispose of such property if:

(a) such sale or disposal is necessary for the continued operation of the debtor's business,

(b) the conservator 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; and

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

SEC. 29. *Treatment of Rapidly Depreciating Encumbered Property owned by the Debtor* -- Upon the application of a creditor whose claim is secured by movable property subject to potentially rapid depreciation, the Court shall, after notice and hearing, order the conservator to either:

(a) allow the property to be foreclosed upon by the secured creditor;

(b) convey to the secured creditor a lien on substitute property of the debtor if such is acceptable to the creditor and is not opposed by any senior lien holders of such property, or, if such is not available,

(c) convey to the secured creditor a lien on the residual funds from the sale of any encumbered property during the proceedings.

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

(a) provides unreasonably inadequate consideration to the debtor and is executed one hundred and eighty (180) days prior to the commencement of proceedings if the third party is an insider of the debtor, and ninety (90) days prior to the commencement of proceedings if the third party is not an insider of the debtor;

(b) involves the payment of a dividend to shareholders executed in violation of the Corporation Code, the provisions in the debtor's corporate charter or by-laws, or other agreements of the debtor;

(c) involves an accelerated payment of a claim to a creditor one hundred and eighty (180) days prior to the commencement of proceedings if the creditor is an insider of the debtor and ninety (90) days prior to the commencement of proceeding if the creditor is not an insider of the debtor;

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

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

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

SEC. 32. *Post-Commencement Credit* -- With the concurrence of the committee of general unsecured creditors of the debtor and the approval of the Court, the conservator may:

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

(b) enter into credit arrangements on behalf of the debtor, secured by mortgages of its unsecured property.

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

SEC. 34. *Treatment of Lessors and other Counter-Parties in Contract* -- Unless specifically cancelled by a court decree prior to issuance of the order commencing proceedings, all contracts of the debtor with creditors and other third parties shall be deemed to continue in force, regardless of pre-commencement defaults by the debtor provided that the debtor makes payments for such services and goods that are provided after commencement of proceedings.

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

SEC. 35. *Opportunity for Counter-Party in Contract to Cure after receiving Notice of Confirmation by the Conservator* -- Any counter-party in a contract with the debtor shall have a reasonable period of time to cure any breaches of its obligations to the debtor that occurred subsequent to commencement of the proceedings upon receiving notice of the conservator's confirmation of the contract.

Sub-Chapter 2. Determination of Claims

SEC. 36. *Determination of Tax Liabilities* -- The debtor shall, as soon as reasonably possible, file a tax return for determination of tax liabilities as of commencement of proceedings.

SEC. 37. *Establishment of a Preliminary Registry of Claims* -- Within twenty days of appointment, the conservator shall establish a preliminary registry of claims. Such registry shall state for each claim:

- (a) the name and reasonable contact details of the creditors;

(b) the amount of the claim as of the date of commencement of proceedings, if the claim is not unliquidated;

(c) the extent to which it is secured by a lien on the debtor's property as of the date of the commencement of proceedings;

(d) its preference classification among those established by Sub-chapter 4 of Chapter 4 of this Act;

(e) whether it is undisputed, disputed, contingent or unliquidated;

(f) the basis of the claim and a reference to the underlying documents supporting the claim or the dispute thereof.

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

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

SEC. 38. *Procedure for Supplementing the Preliminary Registry of Claims* -- Any person may file an application to the conservator to recognize a claim against the debtor within twenty days after the second date of publication notice that the preliminary registry of claims has become available.

SEC. 39. *Procedure for Determining Disputed and Undisputed Claims* -- Within thirty days from the expiration date for supplementing the preliminary registry of claims, creditors, shareholders and other interested parties may submit a challenge of a claim or claims to the Court, serving a certified copy on the conservator and the challenged creditor. Such challenge shall set forth with reasonable specificity the basis therefor. Upon the expiration of the thirty-day challenge period, the conservator shall submit to the Court the registry of claims containing the undisputed claims that have not been subject to challenge. Such claims shall become final upon the filing of the register and may be subsequently set aside only on grounds of fraud, accident, mistake, or excusable neglect.

SEC. 40. *Procedure for Adjudicating Disputed, Challenged and Unliquidated Claims* -- Decisions of the conservator regarding a claim may be appealed to the Court. In such disputes, the parties shall be the conservator and the disputing creditor, or the debtor (in cases where a claim is

alleged to be wrongfully allowed): *Provided, however,* That any creditor or other party who might be prejudiced by the allowance or disallowance of the claim may intervene in the proceeding.

SEC. 41. *Procedure for Appealing Decisions of the Conservator regarding Disputed, Challenged and Unliquidated Claims* -- The procedures for appealing the decisions of the conservator shall be governed by applicable Rules of Court.

SEC. 42. *Estoppel of Secured Creditors Regarding Overvaluation of their Encumbered Property* -- A secured creditor claiming a full or partial security shall be estopped from claiming as an unsecured creditor the difference between the claimed and realized value of the encumbered property if the amount realized from a sale of the encumbered property fails to cover the claimed or attributed value thereof. Such amount shall be a subordinated claim under Section 106 of this Act.

SEC. 43. *Estimation of Claims for Purposes of Voting or Serving on a Creditors' Committee* -- Upon request of a creditor or shareholder, the Court shall, after notice and hearing, estimate a disputed, challenged, or unliquidated claim for determination of the creditor's rights in participating in collective decision-making of creditors. In such disputes, the parties shall be the conservator and the disputing creditor. *Provided, however,* That any creditor who might be prejudiced by the estimation of the claim may, participate in the proceedings.

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

SEC. 44. *Who may serve as a Conservator* -- Any individual with the following qualifications may serve as a conservator:

- (a) expertise and acumen to manage and operate a business similar in size and complexity as that of the debtor under the circumstances called for depending on the particular relief requested;
- (b) knowledge in management, finance and rehabilitation of distressed companies;
- (c) general familiarity with the provisions of this Act and the rights and duties of a conservator thereunder;
- (d) absence of any criminal record or evidence of questionable moral character;
- (e) willingness and ability to file a bond in such amount as may be determined by the Court.

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

SEC. 45. *Conflicts of Interest* -- No individual may serve as a conservator, perform conservatorship functions as an employee of a conservator, or serve on a conservatorship committee if he has a conflict of interest. *Provided, however,* That conflicts of interest that might compromise the conservator's duty to the debtor may be waived by vote of the debtor's board of directors, and

conflicts of interest that might compromise the conservator's duties toward the creditors or shareholders may be waived by a simple majority decision of the disinterested parties.

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

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

SEC. 46. Appointment of a Conservator -- The conservator shall be appointed by the Court: *Provided, however,* That the Court shall appoint as conservator any qualified individual whose nomination is supported by more than fifty (50) percent of the secured creditors and general unsecured creditors, if evidence of such is submitted with the petition or by a manifestation to the Court prior to the conservator's appointment.

SEC. 47. Rights and Duties of a Conservator -- Subject to the control of the Court, the conservator shall administer and preserve the property of the debtor during the pendency of the proceedings, for purposes of protecting the interests of the creditors and shareholders thereof, taking into account their rights as determined by this Act, the rules of procedure of the Court, and other applicable laws: *Provided, however,* That, absent evidence of circumstances justifying more direct management, the rights and responsibilities of administering and preserving the assets of the debtor shall be delegated to the debtor's management.

The conservator shall further be deemed an officer of the Court tasked with facilitating the resolution of the various rights of the creditors and shareholders.

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

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

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

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

SEC. 51. *Recordation of Pending Proceedings at Property Registration Offices* -- The conservator shall take all reasonable steps to preserve the rights of the debtor through submissions to the applicable land and property registries in accordance with applicable legislation: *Provided,* That no such actions shall diminish or otherwise compromise the rights of claimants with valid, prior-registered liens against such property.

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

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

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

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

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

- (a) object to petitions for post-commencement financing requested by the conservator;
- (b) review the conservator's records in connection with the administration of the debtor;
- (c) remove the conservator from his position in accordance with the procedures in this Act;
- (d) prepare a rehabilitation plan if so required under this Act; and
- (e) appoint one attorney to represent the legal interests of the general unsecured creditors, the reasonable costs of which shall be reimbursable from the debtor as an administrative expense.

CHAPTER IV -- REMEDIES

Sub-Chapter 1. Fast-Track Rehabilitation

SEC. 57. *Default Relief* The debtor and creditors shall be limited to relief under this sub-chapter unless:

- (a) the debtor has initiated voluntary proceedings under this Act seeking relief under Sub-chapter 3 of this Chapter;
- (b) the debtor is a non-stock corporation or a partnership; or
- (c) more than half of the secured creditors request conversion to relief under Sub-chapter 2 of this Chapter within thirty days of notice of commencement of proceedings.

SEC. 58. *Presentation and Approval of Plan* -- Within thirty days of commencement of proceedings, the conservator shall submit a time bound plan for implementing the relief allowed under this sub-chapter, serving individual notice on creditors and shareholders that a plan is available to them for review and comment.

The Court shall set a hearing on the plan no later than thirty days from the date of notice of its submission. The plan shall be approved by the Court no later than ten (10) days after the hearing

unless the plan fails to provide sufficient detail as to how it will be implemented or if it violates the provisions of this Act.

SEC. 59. *Establishment and Capitalization of a Subsidiary of the Debtor* -- The conservator shall establish a subsidiary corporation whose shares shall be issued to the debtor in the form of a single class of common stock: *Provided, however,* That five of the issued shares may be issued to nominee holders/incorporators, one of whom shall be the conservator. The number of shares issued shall equal the amount of indebtedness of the debtor represented by its disputed and undisputed claims reflected in the registry of claims. The par value of each share shall be one peso: *Provided, however,* That the debtor may issue no par value shares if the amount of the indebtedness exceeds the estimated value of the debtor's assets.

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

SEC. 60. *Non-Requirement of Approval of Shareholders* -- Notwithstanding the provisions in the Corporate Code, the debtor, through, the conservator, may transfer all or substantially all of the assets of the debtor to the subsidiary corporation without the approval of the debtor's shareholders.

SEC. 61. *Issuance of Bonds* -- The conservator may also arrange for the issuance of bonds by the subsidiary corporation to the debtor: *Provided,* That the total nominal value of such bonds shall not exceed twenty percent of the debt of the debtor and the monthly payments on which shall not exceed twenty percent of the monthly payment obligations of the debtor at the time of commencement of the proceedings: Such bonds may be secured by liens on property of the subsidiary corporation. Notwithstanding any contractual prohibitions or regulations to the contrary, the conservator may establish and register liens on encumbered property of the subsidiary corporation: *Provided,* That such liens are junior to pre-existing liens.

SEC. 62. *Offer to Current Shareholders* -- In cases where the debtor had initiated voluntary proceedings, the shareholders of the debtor shall have the option of purchasing up to twenty (20) percent of the shares of the subsidiary corporation, prior to their public sale. The purchase price of the shares shall be equal to twenty (20) percent of the total disputed and undisputed claims. The expiration date for receiving offers shall be no later than sixty days from approval of the plan. Each purchase offer shall be combined with the offer to tender at least twenty percent of the shares of the debtor. In cases where more than one offer is tendered, the winner of the tender shall be the offer or submitting the greatest number of the debtor's shares. The funds tendered by the purchaser shall be

held in escrow until the auction of the remaining shares. Shares that are submitted in a winning bid shall obtain the status of treasury shares of the debtor.

SEC. 63. *Auction of Shares* -- The shares and bonds of the subsidiary corporation shall be offered to the public in a manner designed to maximize the price paid: *Provided, however,* That the reserve price for the shares and bonds shall be equal to the amount of the secured claims against the debtor plus estimated outstanding administrative costs of the proceeding, less the amount raised from any initial offering to shareholders.

SEC. 64. *Creditor Claim Certificates* -- In order to facilitate the liquidity of claims and increase demand for the shares of the subsidiary corporation, the conservator or his agent, with the approval of the Court, may issue up to five creditor claim certificates for each claim, to be denoted series A-E. Each such certificate shall indicate on its face the amount of the claim and its priority status under Sub-chapter 4 of this Chapter. At the request of the creditor, and for a reasonable fee, the conservator or his agent shall issue certificates in smaller amounts.

SEC. 65. *Transferring Creditor Claim Certificates* -- Individuals may purchase creditor claim certificates of any series from creditors or other holders, the consideration for which may be cash or a promise of shares in the subsidiary corporation. Such certificates may be transferred by delivery or through a registry administered by the conservator or a transfer agent designated by the conservator. A creditor may transfer differing series of Creditor Claim Certificates to various potential bidders.

SEC. 66. *Use of Creditor Claim Certificates in Bidding* -- The auction organizer shall accept creditor claim certificates in lieu of cash or in a combination therewith, taking into account the valuation calculated under Section 67 of this Act. The inclusion of a creditor claim certificate in a winning bid shall be deemed a complete waiver of the right represented by the certificate to participate in the distribution of cash proceeds from the sale.

SEC. 67. *Valuation of Creditor Claim Certificates submitted in Bidding* -- The value ascribed to a creditor claim certificate of any particular class submitted in a bid shall be proportional to the extent that cash generated from the offering of shares is available to pay non-submitted claim certificates of that particular class.

SEC. 68. *Effect of Failure to meet Reserve Price for controlling Block of Shares* -- A failure of the auction to garner an amount of cash and secured creditor claim certificates, which, when added to the amount raised by the offer to current shareholders, equals the amount of the secured claims and estimated administrative costs shall result in a conversion to liquidation procedures under this Act. In such case the money in escrow from any shareholder offer and from the bidders shall be returned, the

contracts transferring the property of the debtor to the subsidiary corporation shall be rescinded, and any liens created to secure bonds of the subsidiary corporation shall be cancelled.

SEC. 69. *Calling of Shareholders' Meeting* -- The conservator shall call an extraordinary shareholders' meeting no later than thirty days after the finalization of the sale of the shares of the subsidiary corporation. The meeting shall call for, among other things, the election of new members of the board of directors of the subsidiary corporation.

SEC. 70. *Dissolution of the Debtor* -- After distribution of the proceeds from the sale of the shares of the subsidiary corporation, the conservator shall assume the rights and duties of a liquidator of the debtor and the finalize its dissolution according to procedures described in Sub-chapter 4 of this Chapter.

Sub-Chapter 2. Court-Supervised Rehabilitation

SEC. 71. *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 a affidavit attached to the petition; or

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

SEC. 72. *Initial Meeting of Debtor and Creditors* -- Within thirty 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. 73. *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. 74. *Compensation of a Rehabilitation Planner* -- The compensation of a rehabilitation planner shall not be considered an administrative expense.

SEC. 75. *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 allow an extension of time if approved by a majority of the secured creditors and general unsecured creditors.

SEC. 76. *Minimal Contents of a Plan* -- In order to be approved by the Court, the plan shall:

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

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

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

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

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

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

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

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

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

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

SEC. 77. *Disclosure to Creditors and Shareholders* -- Upon its completion, the plan shall be submitted to the conservator and Court. The conservator shall make copies of the plan available to the creditors and shareholders for review and copying and shall within five days of receipt, notify each creditor and shareholder who has made an appearance of such availability. Such notice shall inform the creditors and shareholders that they have the right to submit to the conservator a manifestation of their opposition to the plan within forty-five days of receipt of notice that the plan is available for review.

SEC. 78. *Submission of Plan for Approval* -- If the majority of a creditor or shareholder class has not submitted a manifestation of opposition to the plan after forty-five days from the time it was distributed to the creditors and shareholders, the conservator shall submit the plan to the Court for approval along with a manifestation of no opposition. If a majority of a class of creditors or shareholders opposes the plan, the conservator shall submit a manifestation of such to the Court instead of a plan for approval.

SEC. 79. *Conversion to Liquidation Proceedings upon Rejection of the Plan* -- Upon receipt of a manifestation by the conservator that a majority of a creditor or shareholder class has rejected the plan, the Court shall convert the proceedings to those under Sub-chapter 4 of this Chapter.

SEC. 80. *Minimal Standards for Confirmation* -- The Court shall approve a plan only if the following requirements are met:

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

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

SEC. 81. *Approval of Plan notwithstanding Disputes over Claims* -- The Court may approve a plan notwithstanding unresolved disputes over claims so long as the required support of the plan is maintained regardless of the outcome of the disputes and the plan can accommodate payment of the claims regardless of the outcome of the disputes.

SEC. 82. *Effect of Approval* -- Approval of the plan shall discharge the financial payment obligations of the debtor unless otherwise allowed to the extent called for by the plan. Contracts and other arrangements between the debtor and its creditors shall be deemed to continue to apply to the extent that they do not conflict with the payment provisions of the plan. Any compromises on amounts payable by the debtor shall be binding on all creditors regardless of whether the plan is successfully implemented, unless the plan is revoked on grounds of fraud. Claims arising after approval of the plan that are otherwise not treated by the plan are not subject to any suspension order.

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

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

SEC. 83. *Liability of General Partners of a Partnership for Unpaid Balances under an Approved Plan* -- The approval of the plan shall not affect the rights of creditors to pursue actions against the general partners of a partnership to the extent they are liable under relevant legislation for the debts thereof.

SEC. 84. *Treatment of Income derived from Forgiveness of Debt* -- Income imputed upon the debtor by any indebtedness reduced in connection with a plan's approval shall be considered income earned prior to commencement of proceedings under this Act.

SEC. 85. *Effect of Failure to Approve* -- A failure to approve the plan by the Court shall result in a conversion of proceedings under this Sub-chapter to those under Sub-chapter 4 of this Chapter.

SEC. 86. *Revocation of Plan on Grounds of Fraud* -- Within ninety (90) days from the approval of the rehabilitation plan, and after notice and hearing, the Court may revoke the approval thereof on the grounds of fraudulent inducement. In such case, the debtor shall come under the proceedings described in Sub-chapter 4 of this Chapter.

SEC. 87. *Discharge of the Conservator* -- Upon issuance of approval of the rehabilitation plan, the conservator shall provide a final report and accounting to the Court. The Court shall then discharge the conservator of his duties.

Sub-Chapter 3. Pre-Negotiated Rehabilitation

SEC. 88. *Requirements* -- Any debtor as defined under this Act may file a petition seeking pre-negotiated rehabilitation as a form of relief. The petition, in addition to the requirements under Sub-chapter 2 of this Chapter shall include:

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

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

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

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

SEC. 89. *Procedures* -- Upon receipt of a petition seeking pre-negotiated rehabilitation, the Court shall issue an order in accordance with Sub-chapter 1 of Chapter 3 of this Act, supplemented with information sufficient to inform interested parties as to the deadlines and procedures established in this Sub-chapter.

SEC. 90. *Exemption from Determination of Claims* -- The requirements of Sub-chapter 3 of Chapter 3 shall not apply to proceedings under this Sub-chapter.

SEC. 91. *Inspection and Review of Rehabilitation Plan* -- Upon commencement of the proceedings, the conservator shall make available for review and copying the rehabilitation plan by any interested party.

SEC. 92. *Approval by the Court* -- Within fifty (50) days from the date of the second publication notice that proceedings have commenced, the Court shall approve the plan unless a creditor submits an objection to it in accordance with this Sub-chapter.

SEC. 93. *Objection* -- Any creditor or shareholder, within forty-five (45) days from the second date of publication notice of commencement of proceedings may submit to the Court an objection to a plan filed under this Sub-chapter. Objections to a rehabilitation plan shall be limited to the following:

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

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

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

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

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

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

SEC. 94. *Hearing on Objection* -- Upon receipt of an objection, the Court shall issue an order setting the time and date of the hearing on the objection. The date of such hearing shall be no earlier than sixty (60) and no later than seventy (70) days after the second date of publication notice of commencement of proceedings. If the Court finds the objection valid, it shall order, when possible, the debtor to cure the petition or plan within a reasonable period. If the Court determines that the debtor and / or creditors acted in bad faith, or that the bases for objection are 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. 95. *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. 96. *Requirements for Initiation* -- Dissolution and liquidation proceedings shall commence either:

(a) upon a finding that a petition to initiate voluntary proceedings 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. 97. *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. 98. *Consequences of Initiating Liquidation Proceedings* -- The commencement of liquidation proceedings shall either initiate or continue the administration 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. 99. *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:

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

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

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

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

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

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

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

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

(i) to sell assets of the debtor prior to the approval of the liquidation plan if such assets are subject to rapid depreciation in value, or such sales are necessary to raise funds to preserve the assets of the debtor: Provided, however, That the sale of the assets shall be made under commercially reasonable conditions in a manner reasonably designed to maximize the 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. 100. *Compensation of the 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. 101. *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. 102. *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 submit their comment or opposition thereto not later than fifteen (15) days before the date of the hearing.

SEC. 103. *Disposition of Encumbered Property held by the Debtor* -- The liquidator may arrange to dispose of encumbered property of the debtor through any means allowed by law in order to maximize the liquidation dividend for the creditors and shareholders. *Provided, however,* That the liquidator may not sell encumbered property bundled with other property if the amount offered or bid is not sufficient to cover the amount of the claims of the creditors holding liens on the property offered for sale. *Provided further,* That the restrictions on the rights of secured creditors to foreclose on and sell encumbered immovable property shall not extend beyond sixty (60) days from the date of the approval of the liquidation plan and thirty (30) days from such date with regard to all other encumbered property.

SEC. 104. *Rules for Payment of Claims Secured by Encumbered Property* -- The liquidator shall distribute the proceeds of the sale of encumbered property, after paying reasonable costs of sale, relevant property taxes, and the expenses necessary to extinguish any possessory liens, according to a priority established by the date of their registration in the appropriate registry. No subsequently registered lien holder shall receive payment unless all lien holders senior thereto are paid in full. Proceeds remaining after payment of claims secured by registered liens shall be applied to claims secured by statutory non-possessory liens on the property not registered with the appropriate registry. *Provided,* That portions of claims arising from imposition of a fine, penalty, forfeiture, or exemplary or punitive damages that are not compensatory for pecuniary loss suffered by the creditor shall be paid according to Section 106 of this Act.

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

SEC. 105. *Rules for Payment of Unsecured Claims* -- The liquidator shall pay the undisputed unsecured claims of the debtor according to the order set forth in Section 106 of this Act. The liquidator shall not pay the claims of any particular class unless and until the creditors of the more senior classes have been paid in full. Where assets are available only to pay a portion of a class, the liquidator shall make payment on a pro-rata basis.

SEC. 106. *Priority of Unsecured Claims* The liquidator shall distribute the proceeds from the sale of unencumbered property and shall distribute surpluses from the sale of encumbered property according to the following order in accordance with the procedures established in Section 105 of this Act:

- (a) administrative expenses;
- (b) unpaid labor wages, other mandated compensation, and corresponding withholding tax on laborers;
- (c) claims of the Government for taxes and other mandatory contributions to federal and local budgetary agencies not otherwise treated in this Sub-chapter arising through the day before commencement of proceedings;
- (d) all claims not otherwise specified in this Section;
- (e) portions of claims arising from imposition of a fine, penalty, forfeiture, or exemplary or punitive damages that are not compensation for pecuniary loss suffered by the creditor;
- (f) claims which have been subordinated by either consent of the creditor or by a provision in this Act or other legislation.

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

SEC. 107. *Contingency for Disputed Claims* -- The liquidator shall set aside funds for paying all disputed claims. In the event that claims are denied and appeals on such decisions are exhausted, the liquidator shall distribute the funds to unpaid undisputed creditors and shareholders according to the order of priority in Sections 104 and 106 of this Act.

SEC. 108. *Submission and Review of Final Report of Liquidator* Upon distribution of the proceeds, the liquidator shall submit a report to the Court which shall describe the methods and results of the sale of debtor's assets and the distribution of proceeds to the creditors. The liquidator shall also send copies of the report to the creditors and shareholders or notify them that the report is available for review and copying. Upon receipt of the report, the Court shall schedule a hearing, notice of which shall be sent to the creditors and shareholders by the liquidator. At the hearing, the liquidator shall

answer any questions of the Court or the creditors or shareholders concerning the liquidation of the debtor.

SEC. 109. *Order Removing the Debtor from the List of Registered Entities at the Securities and Exchange Commission* – Upon determining that the liquidation has been completed according to this Act and applicable law, the Court shall issue an order approving the report and ordering the Securities and Exchange Commission to remove the debtor from the registry of legal entities.

SEC. 110. *Termination of Proceedings* – Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the Securities and Exchange Commission, it shall issue an order terminating the proceedings.

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

Sub-Chapter 5. Banks and other Financial Institutions under Receivership pursuant to a State-Funded or State-Mandated Insurance System

SEC. 111. *Provision of Assistance*--The Court shall issue orders, adjudicate claims, and provide for other relief necessary to assist in the liquidation of a financial institution under receivership established by a state-funded or state-mandated insurance system.

SEC. 112. *Application of Relevant Legislation* -- The liquidation of financial institutions shall be determined by the relevant legislation. The provisions in this Act shall apply in a suppletory manner.

Sub-Chapter 6. Foreign Registered Corporations with Assets in the Philippines

SEC. 113. *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. 114. *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;
- (c) providing other necessary relief.

SEC. 115. *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 resort to a unified insolvency or rehabilitation proceeding;

(c) whether other jurisdictions have given recognition to the foreign proceeding;

(d) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with the manner proscribed 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. 116. 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.

SEC. 117. Repealing Clause – The specified sections of the following Acts are hereby deemed repealed:

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

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

(c) the Corporation Code, Section 119.

SEC. 118. Amending Clause – Article 2237 of the Civil Code is hereby amended to read as follows: “Insolvency and rehabilitation of juridical entities shall be governed by special laws; the provisions of this Code shall apply in a suppletory manner. Insolvency of physical persons shall be governed by special laws insofar as they are not inconsistent with this Code.”

SEC. 119. Effective Date – This Act will take effect immediately upon approval.

SEC. 120. Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases – This Act shall govern all petitions filed after it takes effect, and also all further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the Court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

Approved,