

FIFTEENTH CONGRESS
REPUBLIC OF THE PHILIPPINES
Second Regular Session

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HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. 6157

EXPLANATORY NOTE

Where bank closure is imminent or unavoidable, especially so during financial distress, an effective liquidation framework for failed banks is indispensable. As an essential tool of the country's financial safety net, it not only protects the interests of all parties affected by a bank closure but also allows for the resolution of the failed bank in an efficient and prompt manner with minimum negative impact on the stability of the banking industry and the country's economic system.

The domestic financial landscape, significantly altered by recent economic crises, reveals the current bank liquidation process as inadequate to respond to challenges posed by actual bank closures. Unable to carry out a quick, responsive and effective resolution of closed banks, its ability to protect bank depositors, creditors, and other affected parties is severely hampered. What results is a protracted and costly endeavor inhibiting maximum recovery by diminishing the value of bank assets and unnecessarily straining government coffers.

The bill at hand institutes much needed reforms to the current bank liquidation regime. It addresses the problems and concerns that continue to plague the system currently in place. The salient points of this measure include:

- *Seamless Transition from Bank Closure to Liquidation.* The bill removes the mandatory 90-day receivership period prior to liquidation to allow for a seamless transition from closure to liquidation. Experience has shown that rehabilitation is no longer feasible after the Monetary Board has closed a bank, mainly because of the latter's dismal financial condition at the time of its closure. Coupled with the bank's eroded franchise value, it virtually negates the chances of a successful recovery.
- *Alternative Modes of Liquidation.* The bill authorizes the statutory liquidator of closed banks to implement alternative bank liquidation methods, namely: *Purchase of Assets and Assumption of Liabilities* transaction and *Bridge Banking*. Both methods are widely used in other jurisdictions and are deemed less costly for the government and less disruptive to the financial system.

- *Enhanced Liquidation Process.* The bill introduces significant reforms which address the limitations of existing laws on bank liquidation:
 1. Clear procedures for the takeover of closed banks and for the filing of the Petition for Assistance in the Liquidation of closed banks (PAL);
 2. Termination of the bank's corporate existence as well as the powers and functions of its stockholders, directors, and officers upon the bank's closure minimizes unnecessary interference and delay in the liquidation process resulting from unwarranted suits brought about by stockholders of the closed bank;
 3. Explicit authority of the bank liquidator to determine the liquidation price of the closed bank's assets based on generally-accepted valuation principles and internationally-accepted valuation standards and practices; and
 4. Explicit authority of the bank liquidator to avail of various modes of disposing real and personal properties of closed banks.
- *Winding-Up Phase.* The bill prescribes a one-year period within which the closed bank's creditors and stockholders are paid their claims against the bank, to be reckoned from the publication of the notice of the approval by the liquidation court of the final distribution of the assets of the closed bank. Claims that remain unclaimed after the lapse of the said period shall be turned over to the government.

On the whole, this bill represents an opportunity to advance and apply the lessons learned from previous bank closure experiences, highlighted no less by the recent global economic recession. What it ultimately seeks to accomplish is ensure a healthy and resilient banking system upon which the nation's financial sector relies heavily on. In so doing, it not only lends itself to the country's economic roadmap but also aligns the country's deposit insurance system with international best practices and standards.

In view of the foregoing, immediate passage of this bill is earnestly requested.


RUFUS B. RODRIGUEZ


MAXIMO B. RODRIGUEZ, JR.

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AN ACT

PROVIDING FOR THE TAKEOVER, LIQUIDATION AND WINDING UP OF A
CLOSED BANKING INSTITUTION

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

CHAPTER I
GENERAL PROVISIONS

Section 1. Title and Coverage. – This Act shall be known as the “*Closed Bank Liquidation Act of 2012*.”

Section 2. Declaration of Policy. – It is the policy of the State to promote the efficient and orderly Liquidation of the assets, and the settlement of the obligations, of Banks which have been ordered closed by the Monetary Board. In so doing, the State shall protect and recognize the rights of creditors, respect the priority of claims, and ensure equitable treatment of creditors who are similarly situated.

Section 3. Definition of Terms. – As used in this Act, the term:

- (a) “Asset” is anything of value either in the form of money, amount owed, movable or fixed assets, including, among others, assets over which the Closed Bank has equitable interest.
- (b) “Bank” shall refer to an entity engaged in the lending of funds obtained in the form of deposits. This shall include universal banks, commercial banks, savings banks, mortgage banks, rural banks, development banks, cooperative banks, stock savings and loan associations, branches in the Philippines of foreign banks, and all other corporations authorized to perform banking functions in the Philippines.
- (c) “Closed Bank” shall refer to a Bank placed under liquidation by the Monetary Board pursuant to law.

(d) "Creditor" shall refer to any holder of a Valid Claim against the assets of the Closed Bank.

(e) "Disputed Claim" shall refer to a claim or suit against the assets of a Closed Bank, or for specific performance, or breach of contract, or damages, and of whatever nature or character, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured. Claims denied by the Liquidator are also classified as Disputed Claims.

(f) "Distribution Plan" (DP) shall refer to the plan of distribution of the assets of a Closed Bank as of the cut-off date of the Statement of Affairs (SOA) of the Closed Bank, in accordance with the rules on concurrence and preference of credits under the Civil Code or other laws. The DP specifies in detail the total amount of assets available for distribution, and the amount and kind of payment for the settlement of the liabilities of the Closed Bank.

A DP may be partial (Partial Distribution Plan or PDP), when it pertains to the distribution of a portion or some of the assets of the Closed Bank, or final (Final Distribution Plan or FDP), when it pertains to the distribution of all the assets of the Closed Bank.

(g) "Liquidation" shall refer to the proceedings under this Act.

(h) "Liquidation Court" shall refer to the Regional Trial Court of general jurisdiction where the Petition for Assistance in the Liquidation of a Closed Bank is filed and given due course.

(i) "Liquidator" shall refer to the Philippine Deposit Insurance Corporation or any of its agents acting as liquidator of a Closed Bank.

(j) "Payout" shall refer to the payment of valid claims for insured deposits.

(k) "Petition for Assistance in the Liquidation of a Closed Bank" (PAL) shall refer to the petition filed by the Liquidator with the Regional Trial Court (RTC) in accordance with Section 16 of this Act.

(l) "Principal Obligation" shall refer to the outstanding obligation including interest as of date of closure of the Bank as validated by the Liquidator.

(m) "Records" shall include all documents, titles, papers and electronic data of the Closed Bank, including those pertaining to deposit accounts of and with the Closed Bank, and its assets, transactions and corporate affairs.

(n) "Residual Assets" shall refer to the Closed Bank assets remaining after payment in full of Liquidation costs, fees and expenses, and the Valid Claims and Surplus Dividends to the Creditors, which shall be turned over to the

stockholders of record of the Closed Bank as of date of closure in proportion to their interest.

- (o) "Statement of Affairs" (SOA) shall refer to a report of financial condition at a given date, showing the: 1) estimated realizable value of assets; 2) classification of credits; and 3) total estimated liabilities to be settled.
- (p) "Surplus Dividend" represents the share of each creditor in the remaining assets of the Closed Bank after payment in full of all the Liquidation costs, fees and expenses, and Valid Claims, in accordance with the rules on concurrence and preference of credits and such other laws defining the legal priorities. The Surplus Dividend is computed at the legal rate of interest from the date of takeover to cut-off date of the distribution plan.
- (q) "Takeover" shall refer to the act of physically taking possession and control of a Closed Bank for purposes of Liquidation.
- (r) "Valid Claim" is the claim recognized by the Liquidator or allowed by the Liquidation Court, which shall be in an amount including interest as of date of closure.
- (s) "Winding Up Period" shall refer to the period provided in Chapter VIII of this Act.

Section 4. Bank Closure and Liquidation. —

- (a) Banking is a public trust. As such, the closure of a Bank is an exercise of police power of the State.
- (b) The authority to forbid a Bank from doing business in the Philippines and direct its Liquidation under this Act is vested exclusively with the Monetary Board, consistent with existing laws.
- (c) The actions of the Monetary Board taken under this Act shall be final and executory, and may not be restrained or set aside except on petition for *certiorari* filed with the Court of Appeals on the ground and upon a finding after due hearing that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the bank of the resolution or order directing the closure, Takeover and Liquidation of the Bank.

CHAPTER II

APPOINTMENT OF A BANK LIQUIDATOR AND ACTIVITIES PRIOR TO CLOSURE

Section 5. Appointment of a Bank Liquidator. – (a) Whenever a Bank is ordered closed by the Monetary Board, the Philippine Deposit Insurance Corporation (PDIC) shall be designated as Liquidator and proceed with the Takeover and Liquidation of the Closed Bank. For this purpose, the following clause in Section 30 of Republic Act No. 7653, as amended, shall not be applicable to Banks:

"The receiver shall determine, as soon as possible, but not later than ninety (90) days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: *Provided*, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board."

(b) The PDIC shall serve to the Board of Directors of the Closed Bank a copy of the Monetary Board resolution or order placing the Bank under Liquidation. The ten (10)-day period within which the stockholders of record representing the majority of the capital stock may file the petition for *certiorari* referred to under Section 4 (c) of this Act shall be reckoned from service of the Monetary Board resolution or order.

Section 6. Modes of Liquidation. – Whenever a Bank is ordered closed by the Monetary Board, the Liquidator is authorized to adopt any or a combination of the following modes of Liquidation:

- (a) Conventional Liquidation
- (b) Purchase of Assets and Assumption of Liabilities
- (c) Bridge Banking

Section 7. Conduct of Due Diligence Prior to Closure. – The PDIC or its agents may conduct in coordination with the Bangko Sentral ng Pilipinas (BSP), a due diligence audit on a Bank in danger of closing for the purpose of determining its financial condition, the appropriate mode of Liquidation in the event of closure, and to establish a deposit profile of the Bank such as, but not limited to, the number of deposit accounts and total insured deposits.

Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws on confidentiality of Bank deposits, the PDIC's conduct of due diligence audit on the assets and liabilities of the Bank shall include the audit, inquiry into or examination of all the deposit accounts and Records of the Bank: *Provided*, That, the information on individual accounts obtained through such audit shall not be disclosed or released to any third party except upon order of the court.

CHAPTER III

SERVICE OF NOTICE OF CLOSURE AND TAKEOVER ACTIVITIES

Section 8. Service of Notice of Closure. – Upon its designation as Liquidator of a Closed Bank as referred to in Section 5, the Liquidator shall serve a notice of closure to the highest-ranking officer of the Bank present in the Bank premises, or in the absence of such officer, post the notice of closure in the Bank premises or on its main entrance. The closure of the Bank shall be deemed effective upon the service of the notice of closure. Thereafter, the Liquidator shall Takeover the Bank and exercise the powers of the Liquidator as provided in this Act.

Section 9. Authority to Force Open. – The Liquidator shall have authority to use reasonable force, including the authority to force open the premises of the Bank, and exercise such acts necessary to take actual physical possession and custody of the Bank and all its assets, records, documents, and take charge of its affairs upon the service of the notice of closure under Section 8 of this Act.

Section 10. Obligations of Directors, Officers, Employees or Agents of the Closed Bank. – Directors, officers, employees or agents of the Bank hold money and other assets of the Bank in trust or administration by them for the Bank in their fiduciary capacity. Upon service of the notice of closure to the Bank as provided in Section 8 of this Act, all directors, officers, employees or agents of the Closed Bank shall have the duty to immediately account for, surrender or turn over to the Liquidator, and provide information relative to, the assets, Records, and affairs of the Closed Bank in their possession or custody.

Section 11. Assistance of Local Government and the Law Enforcement Agencies. – When the circumstances so warrant, the local government unit and law enforcement agencies concerned shall, upon request, immediately provide assistance to the Liquidator during the service of notice of closure and actual Takeover operations to ensure the orderly conduct thereof and the security and safety of the personnel of the Liquidator.

In case of the absence of Bank employees and officers, at least one representative of the local government unit concerned shall act as witness to the inventory taking of the assets and Records of the Closed Bank.

CHAPTER IV

CONVENTIONAL LIQUIDATION

Section 12. Authority of the Liquidator. – The Liquidator is empowered to:

- (a) Represent and act for and in behalf of the Closed Bank;

- (b) Gather and take charge of all the assets, Records and affairs of the Closed Bank, and administer the same for the benefit of its creditors;
- (c) Collect loans and other claims of the Closed Bank, and for this purpose, modify, compromise, condone or restructure the terms and conditions of such loans or claims as may be deemed advantageous to the interest of the creditors of the Closed Bank;
- (d) Convert the assets of the Closed Bank to money, as far as practicable;
- (e) Appoint and hire persons or entities to perform powers and functions of the Liquidator or assist in the performance thereof;
- (f) Bring suits to enforce liabilities of the directors, officers, employees, agents of the Closed Bank and other entities related or connected to the Closed Bank or to collect, recover, and preserve all assets, including assets over which the Bank has equitable interest;
- (g) Hire or retain private counsel as may be necessary;
- (h) Pay utilities, rentals and salaries of personnel of the Closed Bank incurred for a period not exceeding three (3) months prior to closure of the Bank, from the available funds of the Closed Bank;
- (i) Utilize revenues and earnings realized by the Liquidator to pay for reasonable costs, fees and expenses in the Liquidation of the Closed Bank;
- (j) Borrow or obtain a loan, or mortgage, pledge or encumber any asset of the Closed Bank, when necessary, to preserve or prevent dissipation of assets, or to redeem foreclosed assets of the Closed Bank, or to minimize losses to the depositors and creditors and pay from available funds of the Closed Bank;
- (k) Distribute the available assets of the Closed Bank, in cash or in kind, to its creditors in accordance with the provisions of the Civil Code on Concurrence and Preference of Credits;
- (l) Dispose records of the Closed Bank that are no longer needed in the Liquidation, notwithstanding the laws on archival period and disposal of records;
- (m) Reduce the interest rate to a reasonable rate if the stipulated interest on deposits is unusually high compared with the prevailing applicable interest rate; *Provided, That, any modification or reduction shall apply to earned and unpaid interest;*
- (n) Adopt modes of Liquidation as provided in this Act; and

- (o) Exercise such other powers as are necessary for the effective discharge of the duties of the Liquidator.

Section 13. Liquidation Costs, Fees and Expenses. – Before any distribution of the assets of the Closed Bank is undertaken in accordance with the preference established by law, the Liquidator shall charge and collect against said assets reasonable Liquidation costs, fees and expenses, including loans, advances and interest thereon for the preservation of assets of the Closed Bank, incurred by the Liquidator as part of the cost of Liquidation proceedings. Liquidation costs, fees and expenses shall include salaries of such personnel whose employment is rendered necessary in, as well as such other costs, fees and expenses incurred or arising out of or in connection with, the Liquidation of the Closed Bank.

Section 14. Status of Employees. – The officers, employees and agents of the Liquidator shall have no liability and shall not be subject to any action, claim or demand in connection with any act done or omitted to be done by them in good faith in connection with the exercise of their powers and functions under this Act or other actions duly approved by the court.

Section 15. Effect of Placement of a Bank under Liquidation. –

- (a) On the corporate franchise or existence

The corporate franchise or existence of a Bank shall be terminated upon its closure by the Monetary Board. Nevertheless, the Bank shall be continued as a body corporate until the termination of the Winding Up Period under Chapter VIII of this Act. Such continuation as a body corporate shall only be for the purpose of liquidating, settling and closing its affairs and the disposal, conveyance or distribution of its assets pursuant to this Act, including prosecuting and defending suits by or against it. The Liquidator shall represent the Closed Bank in all cases by or against the Closed Bank. In no case shall the Bank be reopened and permitted to resume banking business after being placed under Liquidation.

- (b) On the powers and functions of its Directors, Officers and Stockholders

The powers, functions and duties, as well as the allowances, remuneration and perquisites of the directors, officers, and stockholders of such Bank are terminated upon its closure. As such, the directors, officers, and stockholders shall be barred from interfering in any way with the assets, records, and affairs of the Bank.

- (c) On the assets

All the assets of the Closed Bank are deemed in *custodia legis* in the hands of the Liquidator. These assets shall not be subject to attachment, garnishment, execution, levy, or any other court processes. A judge, officer of the court or any person who shall issue order, process, or cause the issuance or implementation of the writ of garnishment, levy, attachment, or execution shall be liable under Section 21 of R.A. 3591, as amended.

Any preliminary attachment or garnishment on any of the assets of the Closed Bank existing at the time of closure shall not give any preference to the attaching or garnishing party. Upon motion of the Liquidator, the preliminary attachment or garnishment shall be lifted and/or discharged.

(d) On labor relations

Notwithstanding the provisions of the Labor Code, the employer-employee relationship between the Closed Bank and its employees shall be deemed terminated upon service of the notice of closure of the Bank in accordance with this Act. Payment of separation pay or benefits shall be made from available assets of the Bank, pursuant to a Distribution Plan of assets approved by the Liquidation Court.

(e) Contractual obligations

The Liquidator may cancel, terminate, rescind or repudiate any contract of the Closed Bank that is not necessary for the orderly liquidation of the Bank, or is grossly disadvantageous to the closed Bank, or for any ground provided by law.

(f) On Interest Payments

The liability of a Bank to pay interest on deposits and all other obligations shall cease upon its closure by the Monetary Board.

(g) Liability for penalties and surcharges for late payment and non-payment of taxes

From the time of closure, the Closed Bank shall not be liable for the payment of penalties and surcharges arising from the late payment or nonpayment of real property tax, capital gains tax, transfer tax and similar charges.

(h) Bank charges and fees on services

The Liquidator, in behalf of the Closed Bank, may continue to impose the usual Bank charges and fees for services rendered after Bank closure, such as, but not limited to, the execution of pertinent deeds and certifications.

(i) Actions pending for or against the Closed Bank

Actions pending for or against the Closed Bank in any court of quasi-judicial body shall, upon motion of the Liquidator, be suspended for a period not exceeding one hundred eighty (180) days and referred to mandatory mediation; *Provided, That:* this shall not apply to actions pending before the Supreme Court. The case shall be referred back to the court or quasi-judicial body for further proceedings upon termination of the mediation.

(j) Final decisions against the Closed Bank

The execution and enforcement of a final decision of a court other than the Liquidation Court against the assets of a Closed Bank shall be stayed. The prevailing party shall file the final decision as a claim with the Liquidation Court which shall be settled in accordance with the rules on Concurrence and Preference of Credits, such other laws defining the legal priorities and rules as may be prescribed by the Supreme Court.

(k) Docket and other court fees

Payment of docket and other court fees relating to all cases or actions filed by the Liquidator with any judicial or quasi-judicial bodies shall be deferred. Any such fees shall constitute as a first lien on any judgment in favor of the Closed Bank or in case of unfavorable judgment, such fees shall be paid as Liquidation costs and expenses during the distribution of the assets of the Closed Bank.

Section 16. Petition for Assistance in the Liquidation (PAL) of a Closed Bank. –

(a) Nature of PAL of a Closed Bank

- 1) Any proceeding initiated under this Section shall be considered *in rem*. Jurisdiction over all persons affected by the proceeding shall be considered as acquired upon publication of the Order setting the case for initial hearing in any newspaper of general circulation in the Philippines.
- 2) A PAL is a special proceeding for Liquidation of a Closed Bank which includes the declaration of the concomitant right of its Creditors and the order of payment of their Valid Claims in the disposition of the assets of the Closed Bank.

(b) Exclusive Jurisdiction of the Liquidation Court

The Liquidation Court shall have exclusive jurisdiction to adjudicate Disputed Claims against the Closed Banks, assist in the enforcement of individual liabilities of the stockholders, directors and officers and decide on all other issues as may be material to

implement the distribution plan adopted by the PDIC for general application to all Closed Banks.

(c) Non-applicability of the Securities Regulation Code and the Rules of Procedure on Corporate Rehabilitation

The provisions of Republic Act No. 8799, otherwise known as "The Securities Regulation Code," and Supreme Court Administrative Matter No. 00-8-10-SC, entitled, "The Rules of Procedure on Corporate Rehabilitation," shall not be applicable to the PAL of the Closed Bank.

(d) Venue

The PAL shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the Closed Bank or the principal office of the Liquidator, at the option of the latter.

(e) Time to File Petition

The PAL shall be filed *ex parte* within a reasonable period from receipt of the Monetary Board resolution placing the Bank under Liquidation.

(f) Period for Filing Claims

All claimants shall file their claims with the Liquidator within sixty (60) days from date of publication of the order setting the PAL for initial hearing. Claims filed outside the prescribed period shall be disallowed.

(g) Filing of Liquidation Report

The Liquidator shall submit annually to the Liquidation Court the Liquidation Report of the Closed Bank for the immediately preceding year.

(h) Contents of the Liquidation Report

The Liquidation Report may include the following information on the Closed Bank:

- 1) Inventory of assets;
- 2) List of recognized liabilities;
- 3) Comparative statement of affairs;
- 4) Collections of receivables and disposals of assets;
- 5) Costs, fees and expenses incurred;
- 6) List of pending cases;
- 7) Plan of action for the succeeding period; and

8) Other information material to assist the Liquidation Court in the Liquidation of the Closed Bank.

(i) Status Report

The Liquidator shall submit to the Liquidation Court a status report on the implementation of the approved partial distribution plan (PDP) within sixty (60) days from finality of the order approving the PDP.

(j) Contingent Claims

Claims the validity of which have not been determined with finality at the time of the submission of the final distribution plan (FDP), either by reason of a pending suit or for whatever reason, shall be considered as contingent claim and shall not be paid under the proposed FDP. Nonetheless, the said contingent claim shall be given valuation based on the principal amount of the claim.

(k) Termination of Liquidation Proceeding and Discharge of the Liquidator

The order of the Liquidation Court approving the FDP shall become final thirty (30) days after receipt thereof by the creditors. Upon finality of the order approving the FDP, the PAL shall henceforth be, for all intents and purposes, considered closed and terminated and the Liquidator, its officers, employees or agents, are forever discharged from any and all claims and/or liability arising from or in connection with the Liquidation of the Closed Bank.

(l) Final Report

The Liquidator shall submit a final report on the implementation of the approved FDP to the Liquidation Court, the Monetary Board and the Securities and Exchange Commission (SEC) within one hundred eighty (180) days after the expiration of the Winding Up Period provided in Chapter VIII of this Act.

(m) Rules of Procedure

The Supreme Court shall promulgate the appropriate procedural rules to implement this Section.

**CHAPTER V
PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES**

Section 17. Definition. – A purchase and assumption (P&A) transaction is one in which a qualified Bank, as determined by PDIC, purchases some or all of the assets, and assumes some or all of the liabilities, of the Closed Bank.

Section 18. Adoption of a Purchase and Assumption Transaction. – The Liquidator of the Closed Bank may adopt a P&A transaction as a mode of liquidating a Closed Bank if it would aid in the expeditious disposition of the assets and prompt settlement of the claims of the creditors of the Closed Bank, subject to the approval of the Liquidation Court.

Upon the effectivity of the P&A transaction, the acquiring Bank shall give the Closed Bank's depositors the option of either withdrawing their deposits or maintaining the funds with the acquirer under a new account. The Rules on Concurrence and Preference of Credits under the Civil Code shall not apply to the transfer or assumption of Deposit liabilities in the Closed Bank by an acquirer.

Section 19. Bank License. – The Liquidator may include the license of the Closed Bank in the P&A transaction, subject to approval by the BSP.

CHAPTER VI BRIDGE BANKING

Section 20. Definition. – A "Bridge Bank" shall refer to a bridge corporation that is licensed by the BSP as a temporary Bank, established and operated to acquire assets and assume liabilities of a Closed Bank, for the purpose of facilitating the Liquidation of a Closed Bank. In issuing a Bridge Bank license, the BSP is authorized to waive the minimum capitalization and other requirements for establishing a Bank under existing laws.

Section 21. Formation, Establishment or Organization of a Bridge Bank. – The PDIC may form, establish, organize, operate, and/or contract to operate corporations whose primary purpose is to operate as a Bridge Bank and which shall hereafter be referred to as a "bridge corporation." In issuing the corporate license for the bridge corporation, the Securities and Exchange Commission (SEC) is authorized to waive the minimum capitalization and other requirements for establishing a corporation under existing laws.

Section 22. When Adopted. – A Bridge Bank mode of Liquidation may be adopted only if the PDIC determines that:

- (a) It would be less disruptive compared to Payout, and would aid in the expeditious disposition of the assets and prompt settlement of the claims of the creditors of the Closed Bank; and
- (b) The preservation of critical banking functions is in the best interest of the depositors and the public.

Section 23. Authority. – The Bridge Bank shall:

(a) Have the authority to purchase assets, assume deposits and other liabilities of the Closed Bank which the Liquidator may determine to be appropriate; and

(b) Perform such banking functions as may be authorized under law.

Section 24. Additional Powers of the Liquidator. – To carry out its authority under this Chapter, the Liquidator, in addition to the authorities enumerated under this Act, shall have the power to:

(a) Sell, assign, transfer, or convey its shareholdings in its bridge corporation to the Closed Bank;

(b) Transfer such assets and deposit liabilities of a Closed Bank to the Bridge Bank, as the Liquidator may deem appropriate. All transfers of assets under this subsection shall:

1) Not be subject to any taxes, such as capital gains tax, income tax, value added tax and documentary stamp tax, and other taxes, as may be applicable;

2) Be effective without any consent from the stockholders and creditors of the Closed Bank, notwithstanding any provision of law to the contrary.

(c) Make advances to the Bridge Bank for the Bridge Bank to operate, upon such terms and conditions and in such form and amounts as the Liquidator may prescribe. Advances made by the Liquidator to the Bridge Bank shall be booked as a liability of the Bridge Bank and shall be paid immediately by the Bridge Bank as soon as it is able to generate sufficient funds.

In the event that the Bridge Bank is terminated pursuant to Section 28, paragraphs (d) and (e) of this Act, the advances made to the Bridge Bank shall partake of the nature of public funds and as such, must be considered a preferred credit similar to taxes due to the national government in the order of preference under Article 2242 of the New Civil Code; and

(d) Appoint, install, designate, and/or remove the directors, officers and other personnel of a Bridge Bank and fix their compensation.

The provisions of existing laws notwithstanding, the officers and employees of the PDIC may be assigned as directors, officers or other personnel of a Bridge Bank under such terms and conditions as the PDIC Board of Directors may prescribe.

Section 25. Term of Existence. – The Bridge Bank shall automatically terminate at the end of two (2) years following the date it was granted a banking license, subject to the

provisions of Section 26 of this Act: *Provided*, That the Liquidator, with the consent of the BSP, may extend the status of the Bridge Bank if deemed necessary to conclude pending negotiations for the merger or consolidation, sale, or acquisition of the Bridge Bank by an acquirer: *Provided, finally*, that the maximum extension shall be one (1) year.

Section 26. Termination. – The Bridge Bank shall terminate upon the earliest of any of the following occurrences:

- (a) The merger or consolidation of the Bridge Bank with another Bank that is not a Bridge Bank; or
- (b) The sale of the Bridge Bank to a qualified buyer, as may be determined by the Liquidator; or
- (c) The purchase of all or substantially all of the assets and assumption of all or substantially all of the deposits and other liabilities of the Bridge Bank by a qualified third party; or
- (d) The expiration of the period provided in Section 25; or
- (e) The determination by the Liquidator that the operation of the Bridge Bank is no longer viable, notwithstanding any other provision of law to the contrary.

Section 27. Effects of Termination Events. –

- (a) *Merger or Consolidation.* – The merger or consolidation of a Bridge Bank with another Bank as provided in Section 26(a) of this Act shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable laws. Any proceeds from such transaction shall form part of the assets of the Closed Bank available for distribution to the Creditors of the Closed Bank in accordance with the rules on Concurrence and Preference of Credits.
- (b) *Sale to a Qualified Buyer.* – Following the sale of a Bridge Bank as provided in Section 26(b) of this Act, the BSP shall terminate the license of the Bridge Bank and the proceeds from such sale shall form part of the assets of the Closed Bank available for distribution to the Creditors of the Closed Bank in accordance with the rules on Concurrence and Preference of Credits.
- (c) *Purchase of Assets and Assumption of Liabilities.* – Following the purchase of all or substantially all of the assets, and assumption of all or substantially all of the deposits and other liabilities, of a Bridge Bank by a qualified third party as provided in Section 26(c) of this Act, the proceeds and the remaining assets and liabilities, if any, shall form part of the assets and liabilities of the

Closed Bank available for distribution to the Creditors of the Closed Bank in accordance with the rules on Concurrence and Preference of Credits.

- (d) *Term Expiration or Early Termination Due to Non-Viability.* – Once the term of a Bridge Bank has expired as provided in Section 26(d) or is terminated or dissolved earlier by the Liquidator pursuant to Section 26(e), PDIC may conduct Payout operations on the insured deposits of the Bridge Bank subject to its right to subrogation under Section 15 of Republic Act No. 3591, as amended. The assets of the Bridge Bank shall form part of the assets of the Closed Bank available for distribution to the creditors of the Closed Bank in accordance with the rules on Concurrence and Preference of Credits.

In all the foregoing cases, the Liquidator shall have all the rights, powers, and privileges, and shall perform the duties related to the exercise of such rights, powers, or privileges, granted by this Act to the Liquidator of a Closed Bank.

CHAPTER VII ASSET MANAGEMENT AND CONVERSION

Section 28. Asset Management. – The assets gathered by the Liquidator shall be evaluated and verified as to their existence, ownership and other factors to determine their realizable value. To the extent possible and provided that the Closed Bank has sufficient funds, the Liquidator shall endeavor to preserve the assets of the Closed Bank and maximize recovery.

Section 29. Conversion of Assets. – The conversion of the assets of the Closed Bank shall be carried out in a fair and transparent manner in accordance with the rules and procedure as may be determined by the Liquidator.

Section 30. Actions of the Liquidator. – In the management and/or conversion of the assets of the Closed Bank, the Liquidator shall have the authority to:

- (a) Represent the Closed Bank before the Land Registration Authority (LRA), Bureau of Lands, Register of Deeds, the Land Transportation Office (LTO), the Assessor's Office or other appropriate office of the local government unit, the Securities and Exchange Commission (SEC), or such other similar government agencies or private entities in ---
- 1) Verifying the authenticity of ownership documents;
 - 2) Registering the interest of the Closed Bank on a specific property;
 - 3) Consolidating ownership over an asset of the Closed Bank;
 - 4) Securing certified true copies of documents held by the foregoing agencies/entities in relation to an asset of the Closed Bank;
 - 5) Securing the appropriate certification from the foregoing agencies/entities in relation to an asset of the Closed Bank; and
 - 6) Performing other related activities;

- (b) Conduct a physical or ocular inspection of the properties owned by, or mortgaged to, the Closed Bank, to determine their existence and present condition;
- (c) Determine the disposal price of assets in accordance with generally accepted valuation principles and internationally-accepted standards and practices, subject to such guidelines as the Liquidator may determine;
- (d) Dispose real or personal properties of the Closed Bank through bidding, negotiated sale or any other mode, whether by piece or by lot, such as lease with option to purchase or bulk sale, as may be reasonably determined by the Liquidator; and
- (e) Engage third parties to manage and/or dispose the assets of the Closed Bank to qualified individuals or entities, as may be determined by the Liquidator.

Section 31. Special Provisions. – Notwithstanding any provision of law to the contrary, the following rules shall apply to the management and/or conversion by the Liquidator of the assets of the Closed Bank:

- (a) Upon notification of the closure of a Bank, the LRA, Bureau of Lands, Register of Deeds, the LTO, the Assessor's Office or other appropriate office of the local government unit, the SEC or such other similar government agencies or private entities shall not allow any transaction affecting the assets of the Closed Bank without the consent of the Liquidator.
- (b) Upon issuance by the Monetary Board of the resolution ordering the closure of a Bank, all persons or entities in possession of any asset of the Closed Bank, including deposit accounts belonging to the Closed Bank, shall hold the said assets in trust for the Liquidator. As such, the persons or entities in possession of such asset shall not allow, authorize or cause the withdrawal, transfer, disposition, removal, conversion, concealment, or other transaction involving or relating to the subject asset.
- (c) Any person or entity in possession of assets of the Closed Bank, including, but not limited to, deposit accounts and land titles, shall, upon closure of a Bank, immediately turn over custody of said assets to the Liquidator.

Section 32. Administration of Funds. – The Liquidator shall have the authority to invest funds received from the conversion of the assets of the Closed Bank in government securities and other government-guaranteed marketable securities. Any provision to the contrary notwithstanding, Liquidation costs, fees and expenses advanced and incurred by the Liquidator in the Liquidation of a Closed Bank may be immediately charged against available funds of said Closed Bank.

Section 33. Disposal of Banking Franchise. – The BSP may, if public interest so requires, award to an institution, upon such terms and conditions as the Monetary Board may approve, the banking franchise of a Closed Bank to operate in the area where said Bank or its branches were previously operating: *Provided*, That whatever proceeds may be realized from such award shall be for the benefit of the creditors of the Closed Bank which shall be distributed in accordance with this Act and the rules on Concurrence and Preference of Credits.

CHAPTER VIII WINDING UP

Section 34. Period. – The period to wind-up the affairs of the Closed Bank shall be three (3) years from the date of publication of notice of the approval by the Liquidation Court of the final distribution of assets of the Closed Bank.

Section 35. Payment of the Principal Obligations and Surplus Dividends of the Creditors. – The Creditors shall have a period of one (1) year from date of publication of notice of the approval by the court of the final distribution plan (FDP) of the Closed Bank within which to claim payment of the Principal Obligations and Surplus Dividends. During this one-year period, the Liquidator shall hold as trustee the assets allocated in the FDP for said Creditors.

Failure by the Creditor to comply with the documentary requirements within the prescribed period and/or refusal to accept the asset as payment shall be deemed as abandonment or waiver of his right to payment.

Section 36. Period for Claiming Residual Assets. – The individual stockholders of record or their duly-authorized representative or the court-appointed stockholders' representative shall have a period of one (1) year from publication of notice of the approval by the court of the FDP of the Closed Bank within which to claim the Residual Assets. During this one-year period, the Liquidator shall hold as trustee the assets allocated in the FDP for said stockholders of record.

Failure by the individual stockholders of record or their duly-authorized representative or the court-appointed stockholders' representative to comply with the documentary requirements within the prescribed period and/or refusal to accept the Residual Assets in kind shall be deemed as abandonment or waiver of right to receive the Residual Assets.

Section 37. Turnover of Unclaimed Payments. – Within two (2) years after the lapse of the one-year period provided in Sections 35 and 36 of this Act, all payments which remain unclaimed by the Creditors and/or stockholders of record shall be turned over to the Bureau of Treasury.

Section 38. Disposal of Records. – The Liquidator shall continue to keep all the pertinent records of the Closed Bank for a period of three (3) years from date of

publication of the approval of the FDP. After the lapse of said period, and in the absence of any controversy arising from the PAL, the Liquidator is authorized to dispose of the same in accordance with the applicable laws, rules and regulations.

CHAPTER IX MISCELLANEOUS PROVISIONS

Section 39. Penalties. – The penalty of *prision mayor* or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Two million pesos (P2,000,000.00), or both, at the discretion of the court, shall be imposed:

(a) Upon a director, officer, employee or agent of a Closed Bank for —

- 1) Refusing to allow the Liquidator to take over a Bank placed under Liquidation or obstructing such action of the Liquidator;
- 2) Refusing to receive the notice of closure;
- 3) Refusing to turn over, or destroying or tampering Bank records;
- 4) Fraudulently disposing, transferring, assigning, or concealing any asset, property or liability of the Closed Bank;
- 5) Willfully making a false statement or entry in any Bank report or document required by the Liquidator;
- 6) Violating or causing any person to violate, the exemption from garnishment, levy, attachment or execution provided under this Act and the New Central Bank Act; or
- 7) Willfully violating any provision of this Act;

(b) Upon any person or entity for —

- 1) Refusing to disclose information, records or data pertaining to the Bank accounts of a Closed Bank to the Liquidator;
- 2) Refusing to turn over possession or custody of the asset of the Closed Bank to the Liquidator;
- 3) Refusing or delaying the:
 - a. Verification of authenticity of the ownership documents;
 - b. Registration of interest of the Closed Bank on a specific property;
 - c. Consolidation of ownership over an asset of the Closed Bank;

- d. Act of securing certified true copies of documents in relation to an asset of the closed Bank;
- e. Act of securing the appropriate certification from the agencies or entities stated in Chapter VII of this Act in relation to an asset of the Closed Bank;
- f. Conduct of a physical or ocular inspection of the properties owned by, or mortgaged to, the Closed Bank, to determine their existence and present condition; or
- g. Other related activities of the Liquidator; or

4) Willfully violating any provision of this Act;

(c) Upon any law enforcement officer who refuses or fails to assist the Liquidator in the service of the notice of closure as provided for under Section 11 of this Act.

The penalty herein imposed is without prejudice to any administrative action that may be filed against erring law enforcement officers, directors, officers, employees or agents of a Closed Bank, or other persons and entities of government agencies or instrumentalities.

Section 40. Presumption of ownership. – All assets, records, and documents in the possession of the Closed Bank at the time of its closure are presumed held by the Bank in the concept of an owner.

Section 41. Presumption of regularity. – The exercise of authority, functions, and duties by the Liquidator under this Act is presumed regularly performed.

Section 42. Finality of actions. – The actions of the Liquidator under this Act shall be final and executory, and may not be set aside by any court, except on petition for *certiorari* with the Court of Appeals on the ground and upon due hearing that the action was taken in excess of jurisdiction or with grave abuse of discretion as to amount to a lack or excess of jurisdiction.

No court, except the Court of Appeals, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Liquidator for any action under this Act. This prohibition shall apply in all cases, disputes or controversies instituted by a private party, the Closed Bank, or any shareholder of the Closed Bank.

Section 43. Visitorial Audit. – Assets and documents of the Closed Bank shall retain their private nature even if administered by the Liquidator. Matters relating to the exercise by the Liquidator of the functions under this Act shall be subject to visitorial audit only.

Section 44. Implementing Rules. – The PDIC shall prescribe the rules and regulations necessary to implement the provisions of this Act.

CHAPTER X TRANSITORY PROVISIONS

Section 45. Application to Pending Actions, Petitions and Claims. –

- (a) This Act shall govern all actions, petitions and claims filed against a Closed Bank after this Act has taken effect.
- (b) This Act shall apply to all actions, petitions, and claims against the Closed Bank pending at the time of the effectivity of, and insofar as consistent with, this Act.
- (c) In the event a new enactment or regulation is issued decreasing the rights and authorities hereunder granted, such new enactment or regulation shall not apply to this Act except in a supplementary manner.

CHAPTER XI FINAL PROVISIONS

Section 46. Repealing Clause. – All acts or parts of acts and executive orders, administrative orders, or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 47. Separability Clause. – If any provision or section of this Act or the application thereof to any person or circumstances is held invalid, the other provisions or sections of this Act, in the application of such provision or section to other persons or circumstances, shall not be affected thereby.

Section 48. Effectivity. – This Act shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,