



Republic of the Philippines
Supreme Court
Manila

EN BANC

A.M. NO. 12-12-11-SC

FINANCIAL REHABILITATION
RULES OF PROCEDURE (2013)

RESOLUTION

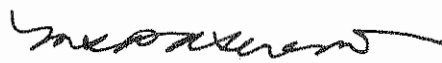
Whereas, under Republic Act No. 10142, otherwise known as the *Financial Rehabilitation and Insolvency (FRIA) Act of 2010*, FRIA, the Supreme Court shall “promulgate the rules of pleading, practice, and procedure to govern the proceedings brought under [the] Act”¹;

Whereas, the Supreme Court, through Memorandum No. 46-2010 dated September 30, 2010 (as amended by Memorandum Order No. 17-2013 dated May 9, 2013), tasked the Sub-Committee on Commercial Courts to revise and/or amend A.M. No. 00-8-10-SC or the *Rules of Procedure on Corporate Rehabilitation (2008)* to incorporate the significant changes brought about by the enactment of R.A. No. 10142, particularly on rehabilitation proceedings;

NOW, THEREFORE, acting on the recommendation of the Sub-Committee on Special Commercial Courts, the Court resolved to **APPROVE** the **Financial Rehabilitation Rules of Procedure (2013)**, otherwise known as the *FR Rules*.

The FR Rules shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.


August 27, 2013.


MARIA LOURDES P. A. SERENO
Chief Justice

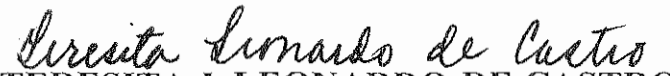
¹ Section 6. *Designation of Courts and Promulgation of Procedural Rules*. - The Supreme Court shall designate the court or courts that will hear and resolve cases brought under this Act and shall promulgate the rules of pleading, practice and procedure to govern the proceedings brought under this Act.



ANTONIO T. CARPIO
Associate Justice




PRESBITERO J. VELASCO, JR.
Associate Justice



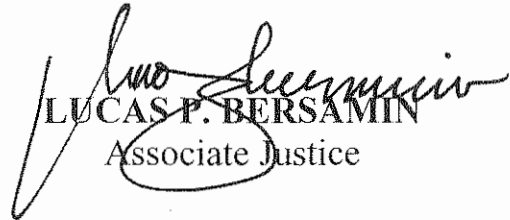
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



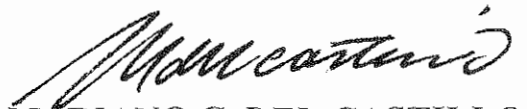
ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



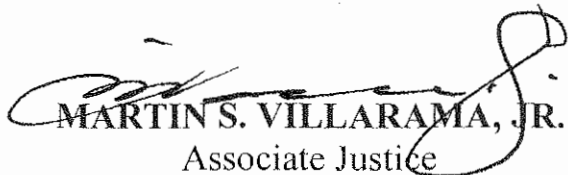
LUCAS P. BERSAMIN
Associate Justice



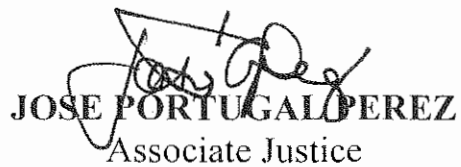
MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



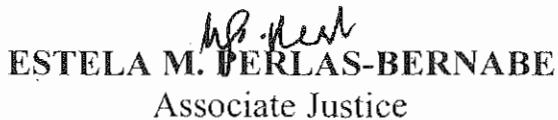
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



Republic of the Philippines
Supreme Court
Manila

**THE FINANCIAL REHABILITATION
RULES OF PROCEDURE (2013)**

**RULE 1
COVERAGE AND GENERAL PROVISIONS**

SEC. 1. TITLE. – These Rules shall be known and cited as the “Financial Rehabilitation Rules of Procedure (2013).”

SEC. 2. SCOPE. — These Rules shall apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships, filed pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending, except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice, in which event the procedures originally applicable shall continue to govern.

SEC. 3. CONSTRUCTION OF RULES. – These Rules shall be liberally construed to promote a timely, fair, transparent, effective, and efficient rehabilitation of debtors, in accordance with the declared policy of the Act.

SEC. 4. NATURE OF PROCEEDINGS.— The proceedings under these Rules shall be *in rem*. Jurisdiction over all persons affected by the proceedings is acquired upon publication of the notice of the commencement of the proceedings and the commencement order or any similar order of the proceedings in one (1) newspaper of general circulation in the Philippines for two (2) consecutive weeks.

The proceedings shall be summary and non-adversarial in nature. The following pleadings are prohibited:

- (A) motion to dismiss;
- (B) motion for a bill of particulars;
- (C) petition for relief;
- (D) motion for extension;
- (E) motion for postponement and other motions of similar intent;
- (F) reply;

- (G) rejoinder;
- (H) intervention; and
- (I) any pleading or motion that is similar to or of like effect as any of the foregoing.

For stated and fully supported compelling reasons, the court may allow the filing of motions for extension or postponement, provided, the same shall be verified and under oath.

Any pleading, motion, or other submission submitted by any interested party shall be supported by verified statements that the affiant has read the submission and its factual allegations are true and correct of his personal knowledge or based on authentic records, and shall contain supporting annexes, which the submitting party shall attest as faithful reproductions of the originals. An unverified submission shall be considered as not filed. An improperly verified submission may be considered as not filed, at the discretion of the judge. Upon motion, the originals of the annexes to a submission may be produced in court for examination or comparison by a party to the proceedings.

All pleadings or motions shall be filed in three (3) printed and two (2) digital copies in CD format. Annexes to the pleadings and other submissions shall be in printed form.

The court may decide matters on the basis of affidavits, counter-affidavits, and other documentary evidence, conducting clarificatory hearings when necessary.

Any order issued by the court under these Rules is immediately executory. Review of any order of the court shall be in accordance with Rule 6 of these Rules. Provided, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of the proceedings in a just, equitable, and speedy manner.

SEC. 5. DEFINITION OF TERMS. – In addition to the terms already defined in the Act, the following terms are hereunder defined for purposes of rehabilitation:

- (a) *Administrative expenses* shall refer to those reasonable and necessary expenses
 - (1) incurred in connection with the filing of a petition under these Rules, including filing and reasonable and necessary professional fees in preparing the petition;
 - (2) arising from, or in connection with the conduct of the rehabilitation proceedings under these Rules;
 - (3) incurred in the ordinary course of business of the debtor after the commencement date;
 - (4) for the payment of new obligations obtained after the commencement date to finance the rehabilitation of the debtor;

- (5) incurred for the reasonable and necessary fees of the rehabilitation receiver, the management committee, and/or of the professionals they may engage; and
 - (6) those otherwise authorized or mandated under the Act or such other expenses authorized under these Rules.
- (b) *Affidavit of General Financial Condition* (Annex “A” of these Rules) shall refer to a verified statement on the general financial condition of the debtor, as required in Section 2(B)(10), Rule 2 of these Rules.
- (c) *Asset* is anything of value which may be either tangible or intangible. Tangible assets can be current assets or fixed assets. Current assets may include cash on hand, money in banks or inventory, while fixed assets may include plant, building, property and equipment. Intangible assets may include intellectual property (such as copyrights, patents, and trademarks) and financial assets (such as accounts receivable, subscription receivables, and bonds and stocks).
- The value of these assets must appear in the latest audited financial statements immediately preceding the filing of the petition. In case the debtor is less than three (3) years in operation, it is sufficient that the book value is based on the audited financial statement/s for the two (2) years or year immediately preceding the filing of the petition, as the case may be.
- (d) *Business day* shall refer to any day other than Saturday, Sunday, or any non-working day.
- (e) *Commencement date* shall refer to the date on which the court issues a commencement order. The effects of the commencement order shall retroact to the date of filing of the petition for voluntary or involuntary proceedings.
- (f) *Foreign court* means a judicial or other authority competent to control or supervise a foreign proceeding.
- (g) *Foreign proceeding* means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency, in which proceeding, the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of rehabilitation, re-organization, or liquidation.
- (h) *Foreign main proceeding* means a foreign proceeding taking place in the State where the debtor has the center of its main interests.
- (i) *Foreign non-main proceeding* means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment, or any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

(j) *Foreign representative* means a person or entity, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or rehabilitation of the debtor or to act as a representative of the foreign proceeding.

(k) *Insolvency* shall refer to the financial incapacity of the debtors to pay their liabilities as they fall due in the ordinary course of business or whenever their liabilities are greater than their assets.

(l) *Liquidation* shall refer to the proceedings under Chapter V of the Act.

(m) *Management committee* is composed of persons, natural or juridical, appointed by the court, pursuant to Section 32, Rule 2 of these Rules. It shall take the place of the management and governing body of the debtor, and assume their powers, rights and responsibilities under the law.

(n) *Proceedings*, unless the term is used in a different context, shall refer to court-supervised rehabilitation proceedings or pre-negotiated rehabilitation proceedings, which are commenced by the court's issuance of a commencement order and which shall last until the court declares the termination of the proceedings pursuant to Section 73, Rule 2 of these Rules.

(o) *Publication notice* shall refer to notice through publication in a newspaper of general circulation in the Philippines on a business day for two (2) consecutive weeks.

(p) *Rehabilitation receiver* shall refer to the person or persons, natural or juridical, appointed as such by the court pursuant to the Act and which shall be entrusted with such powers, duties, and responsibilities as set forth herein. Where the rehabilitation receiver is a juridical entity, the term includes the juridical entity's designated representative.

(q) *Standstill period* shall refer to the period agreed upon by the debtor and its creditors to enable them to negotiate and enter into an out-of-court or informal restructuring/workout agreement or rehabilitation plan pursuant to Rule 4 of these Rules. The standstill agreement may include provisions identical with or similar to the legal effects of a commencement order under Section 9, Rule 2 of these Rules.

(r) *Stay or Suspension Order* shall refer to an order issued in conjunction with the commencement order that shall suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor; suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor; prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

(s) *Working day* shall have the same meaning as business day.

SEC. 6. VENUE. – All petitions pursuant to these Rules shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the debtor alleged to be insolvent as specified in its articles of incorporation or partnership or in its registration papers with the Department of Trade and Industry (DTI) in cases of sole proprietorship, as the case may be. Where the principal office of the corporation, partnership or association as registered in the Securities and Exchange Commission (SEC) is in Metro Manila, the action must be filed in the Regional Trial Court of the city or municipality where the head office is located.

A petition for voluntary or involuntary rehabilitation involving a group of debtors shall be filed in the Regional Trial Court which has jurisdiction over the principal office of any of the debtors alleged to be insolvent, as specified in its articles of incorporation or partnership, or registration papers with the DTI in cases of sole proprietorship, as the case may be.

SEC. 7. NOTIFICATION TO FOREIGN CREDITORS OF A PROCEEDING UNDER THESE RULES. – Except when otherwise indicated under a particular rule,

- (A) whenever under these Rules notice is to be given to creditors in the Philippines, such notice shall also be given to the known foreign creditors with no addresses in the Philippines. The court may order that appropriate steps be taken with a view to notifying any foreign creditor whose address is not yet known.
- (B) such notice shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notice would be more appropriate.
- (C) when a notice of commencement of a proceeding under these Rules is to be given to foreign creditors, the notice shall
 - (1) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (2) indicate whether secured creditors need to file their secured claims; and
 - (3) contain any other information required to be included in such notice to creditors pursuant to these Rules and the orders of the court.

SEC. 8. SUBSTANTIVE AND PROCEDURAL CONSOLIDATION. – Each juridical entity shall be considered as a separate entity under the proceedings in these Rules and its assets and liabilities may not be commingled or aggregated with those of another, unless the latter is a related enterprise that is owned or controlled directly or indirectly by the same interests. The commingling or aggregation of

assets and liabilities of the debtor with those of a related enterprise may only be allowed where

- (A) there was commingling in fact of assets and liabilities of the debtor and the related enterprise prior to the commencement of the proceedings;
- (B) the debtor and the related enterprise have common creditors and it will be more convenient to treat them together rather than separately;
- (C) the related enterprise voluntarily accedes to join the debtor as party-petitioner and to commingle its assets and liabilities with the debtor's; and
- (D) the consolidation of assets and liabilities of the debtor and the related enterprise is beneficial to all concerned and promotes the objectives of rehabilitation.

The court, upon proper motion, may join other entities affiliated with the debtor as parties for a complete determination of the claims in the proceedings.

SEC. 9. DECISIONS OF CREDITORS. – Decisions of creditors shall be made according to the relevant provisions of the Corporation Code in the case of stock or non-stock corporations or the Civil Code in the case of partnerships that are not inconsistent with the Act and these Rules.

SEC. 10. CREDITORS' REPRESENTATIVES. – Creditors may designate representatives to vote or otherwise act on their behalf or on behalf of their class, by filing notice of such representation, with supporting documents, with the court and serving a copy on the rehabilitation receiver and the parties whose appearances have been accepted by the court.

SEC. 11. LIABILITY OF INDIVIDUAL DEBTOR, OWNER OF A SOLE PROPRIETORSHIP, PARTNERS IN A PARTNERSHIP, OR DIRECTORS AND OFFICERS. – The owner of a sole proprietorship, the partners in a partnership, or the directors and officers of a corporate debtor shall be liable for double the value of the property sold, embezzled or disposed of, or double the amount of the transaction involved, whichever is higher, to be recovered for the benefit of the debtor and the creditors, if they, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully commit the following acts:

- (A) Dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors; or

- (B) Conceal, authorize or approve the concealment from the creditors, or embezzle or misappropriate, any property of the debtor.

The court shall determine the extent of the liability of an owner, partner, director or officer under this Section. In this connection, in case of partnerships and corporations, the court shall consider the amount of the shareholding or partnership or equity interest of such partner, director or officer, the degree of control of such partner, director or officer over the debtor, and the extent of the involvement of such partner, director or debtor in the actual management of the operations of the debtor.

SEC. 12. AUTHORIZATION TO EXCHANGE DEBT FOR EQUITY. – Any bank, whether universal or not, may acquire and hold an equity interest or investment in a debtor or its subsidiaries when conveyed to such bank in satisfaction of debts pursuant to a Rehabilitation Plan approved by the court: Provided, That such ownership shall be subject to the ownership limits applicable to universal banks for equity investments; and Provided, further, that any equity investment or interest acquired or held pursuant to this section shall be disposed by the bank within a period of five (5) years or as may be prescribed by the Monetary Board.

RULE 2 COURT-SUPERVISED REHABILITATION

(A) INITIATION OF PROCEEDINGS

1. VOLUNTARY PROCEEDINGS

SEC. 1. WHO MAY PETITION. – When approved by

- (a) the owner, in case of a sole proprietorship;
- (b) a majority of the partners, in case of a partnership; or
- (c) a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or at least two-thirds (2/3) of the members in a non-stock corporation, in case of a corporation;

an insolvent debtor may initiate voluntary proceedings under this Rule by filing a petition for rehabilitation with the court based on the grounds hereinafter specifically provided.

A group of debtors may file a petition for rehabilitation under this Rule when (1) one or more of its members foresee the impossibility of meeting debts when they respectively fall due, and (2) the financial distress would likely adversely affect the financial condition and/or operations of the other members of the group or the participation of the other members of the group is essential under the terms and conditions of the proposed Rehabilitation Plan.

SEC. 2. CONTENTS OF THE PETITION. –

- (A) The petition filed by the debtor must be verified and must set forth with sufficient particularity all of the following material facts:
- (1) the name, business, and principal address and other addresses of the debtor;
 - (2) the nature of the business and principal activities of the debtor, and the addresses where these activities are conducted;
 - (3) the history of the debtor;
 - (4) the fact and the cause of the debtor's insolvency;
 - (5) the specific relief sought under this Rule;
 - (6) the grounds upon which the petition is based;
 - (7) all pending actions or proceedings by or against the debtor/s and the courts or tribunals where they are pending;
 - (8) the threats or demands to enforce claims or liens against the debtor/s;
 - (9) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees and stockholders; and
 - (10) the exact address/es at which documents regarding the debtor and the proceedings may be reviewed and copied.
- (B) The petition shall be accompanied by the following documents:
- (1) the income tax returns stamped as received by the BIR for the past two (2) years prior to the year of filing;
 - (2) an audited financial statement of the debtor at the end of its last fiscal year;
 - (3) interim financial statements not earlier than thirty (30) days prior to the filing of the petition and certified under oath by the appropriate officer, except when the petition is filed within thirty (30) days after the end of the fiscal year;
 - (4) a Schedule of Debts and Liabilities which lists all the creditors of the debtor, indicating the name and last address of record of each creditor; the amount of each claim as to principal, interest, or penalties due thirty (30) days prior to the date of filing; the nature of the claim; and any pledge, lien, mortgage, judgment or other security given for the payment thereof;
 - (5) an Inventory of Assets which must list with reasonable particularity all the assets of the debtor, whether in the possession of the debtor or third parties, stating the nature of each asset; the location and condition thereof; the book value and market value of the asset, and attaching the corresponding certified copy of the certificate of title thereof in case of real property, or the evidence of title or ownership in case of movable property; the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lien holders and claimants.

- The Inventory shall include (i) a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due and their correct addresses, the dates of maturity, and the degrees of collectability categorizing them as highly collectible to remotely collectible, and (ii) a Schedule of Existing Claims against third parties which must indicate the name and last address of record of each third party against whom the debtor has a claim, the nature and amount of the claim, including the principal, interest, or penalties due from each third party and any pledge, lien, mortgage, judgment or other security or collateral given for the payment of each claim, and a brief statement of the facts which gave rise to the claim;
- (6) a Rehabilitation Plan which conforms with the minimal requirements set out in Section 61, Rule 2 of these Rules;
 - (7) a Schedule of Payments and Disposition of Assets which the debtor effected within one (1) year immediately preceding the filing of the petition;
 - (8) a Schedule of Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;
 - (9) a Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;
 - (10) an Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" of these Rules; and
 - (11) a list containing at least three (3) nominees for the position of rehabilitation receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax numbers and e-mail addresses.

All attachments to the petition shall be deemed part and parcel of the verified petition.

SEC. 3. VERIFICATION BY THE DEBTOR. - The petition filed by the debtor must be verified by an affidavit of a responsible officer of the debtor, whose authority must be attached to the petition, and shall be in a form substantially as follows:

"I, _____, (position) of (name of petitioner), do solemnly swear that:

- (A) the petitioner has been duly authorized to file the petition and that the stockholders (or members or partners) and board of directors (or governing body) have approved and/or consented to, in accordance with law, all actions or matters necessary or desirable to rehabilitate the debtor, including the conversion of the rehabilitation proceedings to liquidation proceedings if so ordered by the court;

- (B) the petition is being filed to protect the interests of the debtor, the stockholders, the investors and the creditors of the debtor, which warrants the appointment of a rehabilitation receiver;
- (C) there is no petition for insolvency filed with any other body, court or tribunal affecting the petitioner;
- (D) the Inventory of Assets and the Schedule of Debts and Liabilities contain the full, correct and true description of all debts and liabilities and of all goods, effects, estate and property of whatever kind or class belonging to the petitioner;
- (E) the Inventory of Assets also contains a full, correct and true statement of all debts owing or due to the petitioner, or to any person or persons in trust for the petitioner and of all securities and contracts whereby any money may hereafter become due or payable to the petitioner or by or through which any benefit or advantage may accrue to the petitioner;
- (F) the petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of the petitioner;
- (G) the petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the Inventory of Assets;
- (H) the petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount;
- (I) the petitioner, its officers, directors and stockholders have not, directly or indirectly, concealed, fraudulently sold or otherwise fraudulently disposed of any part of the petitioner's real or personal property, estate, effects or rights of action, and the petitioner, its officers, directors and stockholders have not in any way compounded with any of its creditors in order to give preference to such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any manner any creditor to whom the petitioner is indebted; and
- (J) the petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence.”

2. INVOLUNTARY PROCEEDINGS

SEC. 4. WHO MAY PETITION. – Any creditor or group of creditors with a claim of, or the aggregate of whose claims is at least One Million Pesos (₱1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital stock or partners' contributions, whichever is higher, may initiate involuntary proceedings under this Rule by filing a petition for rehabilitation of a debtor with the court and on the grounds hereinafter specifically provided.

SEC. 5. GROUNDS TO INITIATE INVOLUNTARY PROCEEDINGS. - Involuntary proceedings may be initiated against the debtor by filing a petition with the court if:

- (A) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least sixty (60) days; or
- (B) the debtor has failed generally to meet its liabilities as they fall due; or
- (C) at least one creditor, other than the petitioner/s, has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.

SEC. 6. CONTENTS OF THE PETITION FOR INVOLUNTARY PROCEEDINGS. – The petition for rehabilitation shall be verified to establish the substantial likelihood that the debtor may be rehabilitated. The petition shall include

- (A) the name, business, and principal address and other known addresses of the debtor;
- (B) the nature of the business and the principal activities of the debtor;
- (C) the circumstances sufficient to support a petition to initiate involuntary rehabilitation proceedings under this Rule;
- (D) the specific relief sought under this Rule;
- (E) a Rehabilitation Plan;
- (F) the names of at least three (3) nominees to the position of rehabilitation receiver, as well as their qualifications, office and email addresses;
- (G) the exact address/es at which documents regarding the debtor and the proceedings may be reviewed and copied, if known to the petitioner/s; and
- (H) documents showing that there is substantial likelihood that the debtor may be rehabilitated.

(B) PROVISIONS COMMON TO VOLUNTARY AND INVOLUNTARY PROCEEDINGS/ACTION ON PETITION AND COMMENCEMENT OF PROCEEDINGS

SEC. 7. ACTION ON THE PETITION. - If the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, within five (5) working days from the filing of the petition, issue a Commencement Order.

If, within the same period, the court finds the petition deficient in form or substance, the court may, in its discretion, give the petitioner/s not exceeding five (5) working days from receipt of notice of the order of the court within which to amend or supplement the petition, or to submit such documents as may be necessary or proper to put the petition in proper order. In such case, the five (5) working days provided above shall be reckoned from the date of the filing of the amended or supplemental petition or the submission of such documents. The court shall dismiss the petition if the deficiency is not complied within the extended five (5)-day period.

SEC. 8. COMMENCEMENT OF PROCEEDINGS AND ISSUANCE OF A COMMENCEMENT ORDER. – The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition.

The Commencement Order shall:

- (A) state the name, address, and business of the debtor;
- (B) state the nature of the business and principal activities of the debtor;
- (C) summarize the ground/s for initiating the proceedings;
- (D) state the relief sought and any requirement or procedure particular to the relief sought;
- (E) state the legal effects of the Commencement Order, including those mentioned in Section 9 of this Rule;
- (F) declare that the debtor is under rehabilitation;
- (G) direct the petitioner/s to cause the publication of the notice of the Commencement order and the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of its issuance;
- (H) if the petitioner is the debtor, direct the debtor to serve, by personal delivery, a copy of the petition on (i) each creditor holding at least ten percent (10%) of the total liabilities of the debtor as determined from the schedule attached to the petition, (ii) the Bureau of Internal Revenue (BIR), and (iii) the appropriate or relevant regulatory agencies such as, but not limited to, the Securities and Exchange Commission (SEC), the *Bangko Sentral ng Pilipinas* (BSP), the Insurance Commission, the Housing and Land Use Regulatory Board (HLURB), and the Energy Regulatory Board, within five (5) days from the issuance of the order;
- (I) if the petitioner/s is/are creditor/s, direct the creditors to serve by personal delivery a copy of the petition on the debtor within five (5) days from the issuance of the order;
- (J) direct the petitioner to ensure that foreign creditors with no known addresses in the Philippines be served a copy of the Commencement Order at their foreign addresses in such a manner that will ensure that the foreign creditor will receive a copy of the order at least fifteen (15) days before the initial hearing;
- (K) appoint a rehabilitation receiver;
- (L) summarize the requirements and deadlines for creditors to establish their claims against the debtor;
- (M) direct creditors to file their verified notices of claims with the court at least five (5) days before the initial hearing date, with a warning that their failure to do so on time will bar them from participating in the rehabilitation proceedings but will not prejudice their right to receive distributions if recommended by the rehabilitation receiver and approved by the court, in accordance with Section 12 of this Rule;

- (N) direct all creditors, the BIR, and all interested parties (including the regulatory agencies concerned) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than fifteen (15) days before the date of the first initial hearing;
- (O) prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after the issuance of the Commencement Order;
- (P) authorize the payment of administrative expenses as they become due;
- (Q) set the case for initial hearing at a date no later than forty (40) days from the date of filing of the petition for the purpose of determining whether there is substantial likelihood for the debtor to be rehabilitated;
- (R) make available copies of the petition and rehabilitation plan for examination and copying by any interested party;
- (S) indicate exact address/es at which documents regarding the debtor and the proceedings may be reviewed and copied;
- (T) state that any creditor or debtor who is not the petitioner, may submit the name or nominate any other qualified person to the position of rehabilitation receiver at least five (5) days before the initial hearing;
- (U) state that all contracts not confirmed in writing by the debtor within ninety (90) days following the issuance of the commencement order shall be considered automatically terminated; and
- (V) include a Stay or Suspension Order, which shall
 - (i) suspend all actions or proceedings in court or otherwise, for the enforcement of all claims against the debtor;
 - (ii) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - (iii) prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - (iv) prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

The issuance of a stay order does not affect the right to commence actions or proceedings in order to preserve *ad cautelam* a claim against the debtor and to toll the running of the prescriptive period to file the claim. For this purpose, the plaintiff may file the appropriate court action or proceeding by paying the amount of One Hundred Thousand Pesos (₱100,000.00) or one-tenth (1/10) of the prescribed filing fee, whichever is lower. The payment of the balance of the filing fee shall be a jurisdictional requirement for the reinstatement or revival of the case.

SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. - The effects of the court's issuance of a Commencement Order shall retroact to the date of the filing

of the petition and, in addition to the effects of a Stay or Suspension Order described in the foregoing section, shall

- (A) vest the rehabilitation receiver with all the powers and functions provided for under the Act, such as the right of access, and the right to review and obtain records to which the debtor's management and directors have access, including bank accounts of whatever nature of the debtor, subject to the approval by the court of the performance bond posted by the rehabilitation receiver;
- (B) prohibit or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed under these Rules, subject to the provisions of Section 49 of this Rule;
- (C) serve as the legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors;
- (D) serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date;
- (E) consolidate 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; and
- (F) exempt the debtor from liability for taxes and fees, including penalties, interests and charges thereof due to the national government or the LGU as provided in Section 19 of the Act.

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

SEC. 10. EXCEPTIONS TO THE STAY OR SUSPENSION ORDER. - The Stay or Suspension Order shall not apply

- (A) to cases already pending appeal in the Supreme Court as of commencement date: Provided, that any final and executory judgment arising from such appeal shall be referred to the rehabilitation court for appropriate action;
- (B) subject to the discretion of the court, to cases pending or filed with a specialized court or quasi-judicial agency which, upon determination by the rehabilitation court upon motion made, is capable of resolving the claim more quickly, fairly and efficiently than the court: Provided,

That any final and executory judgment of such court or agency shall be referred to the court and shall be treated as a non-disputed claim;

- (C) to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;
- (D) to any form of action of customers or clients of a securities market participant to recover or otherwise claim moneys and securities entrusted to the latter in the ordinary course of the latter's business as well as any action of such securities market participant or the appropriate regulatory agency or self-regulatory organization to pay or settle such claims or liabilities;
- (E) to the actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement for the settlement of securities transactions in accordance with the provisions of the Securities Regulation Code and its implementing rules and regulations;
- (F) to the clearing and settlement of financial transactions through the facilities of a clearing agency or similar entities duly authorized, registered and/or recognized by the appropriate regulatory agency like the BSP and the SEC, as well as any form of actions of such agencies or entities to reimburse themselves for any transactions settled for the debtor; and
- (G) to any criminal action against individual debtor or owner, partner, director or officer of a debtor. The enforcement of the civil liability arising from the offense charged, deemed instituted with the criminal action, shall be covered by the Stay Order.

SEC. 11. EFFECTIVITY AND DURATION OF COMMENCEMENT ORDER. – The Commencement Order shall be effective for the duration of the rehabilitation proceedings, unless (a) earlier lifted by the court, (b) the rehabilitation plan is seasonably confirmed or approved, or (c) the rehabilitation proceedings are ordered terminated by the court pursuant to Section 73 of this Rule.

SEC. 12. NOTICE OF CLAIM. – Every creditor of the debtor or any interested party whose claim is not yet listed in the schedule of debts and liabilities shall file his verified notice of claim not later than five (5) days before the first initial hearing date fixed in the Commencement Order.

If a creditor files a belated claim, he shall not be entitled to participate in the proceedings but shall be entitled to receive distributions arising therefrom if

recommended and approved by the rehabilitation receiver, and approved by the court.

SEC. 13. COMPLIANCE WITH JURISDICTIONAL REQUIREMENTS.— On or before the first initial hearing set in the Commencement Order, the petitioner shall file a publisher's affidavit showing that the publication requirements and a petitioner's affidavit showing that the service requirement for local creditors and notification requirement for foreign creditors had been complied with, as required in the Commencement Order.

Before proceeding with the initial hearing, the court shall determine whether the jurisdictional requirements set forth above had been complied with.

SEC. 14. ACTION AT THE INITIAL HEARING. – After making a determination that the jurisdictional requirements have been complied with, the court shall

- (A) determine the creditors who have made timely and proper filing of their notice of claims and issue an order that the creditors not named therein shall not be entitled to participate in the proceedings but shall be entitled to receive distributions arising from the proceedings;
- (B) hear and determine any objection to the qualifications and appointment of the rehabilitation receiver and, if necessary, appoint a new one; and
- (C) direct the creditors to discuss their comments on the petition and the Rehabilitation Plan submitted pursuant to Section 8(N) of this Rule;
- (D) direct the rehabilitation receiver to evaluate the financial condition of the debtor and to prepare and submit to the court within forty (40) days from the last initial hearing the report provided in Section 16 of this Rule; and
- (E) determine the reasonableness of the rehabilitation receiver's fees stated in the Rehabilitation Plan, which shall be presumed reasonable unless the creditors object to it.

SEC. 15. ADDITIONAL HEARINGS. - The court may hold additional hearings as may be necessary to continue the initial hearing process but these hearings must be concluded not later than ninety (90) days from the first hearing date fixed in the Commencement Order.

SEC. 16. REPORT OF THE REHABILITATION RECEIVER. - Within forty (40) days from the termination of the initial hearing, and with or without the comments from the creditors, the rehabilitation receiver shall submit a report to the court stating his preliminary findings and recommendations on whether

- (A) the debtor is insolvent; the causes thereof; and any unlawful or irregular act or acts committed by the owner/s of a sole proprietorship, partners of a partnership, or directors or officers of a corporation in contemplation of the insolvency of the debtor or which may have contributed to the insolvency of the debtor;
- (B) the underlying assumptions, the financial goals and the procedures to accomplish such goals as stated in the petitioner's Rehabilitation Plan are realistic, feasible and reasonable;
- (C) there is a substantial likelihood that the debtor could be successfully rehabilitated;
- (D) the petition should be dismissed; and
- (E) the debtor should be dissolved and/or liquidated.

SEC. 17. GIVING DUE COURSE TO OR DISMISSAL OF PETITION, OR CONVERSION OF PROCEEDINGS. - Within ten (10) days from receipt of the report of the rehabilitation receiver mentioned in the immediately preceding section, the court may

- (A) give due course to the petition upon a finding that
 - (1) the debtor is insolvent, and
 - (2) there is a substantial likelihood that the debtor could be successfully rehabilitated;
- (B) dismiss the petition upon a finding that
 - (1) the debtor is not insolvent,
 - (2) the petition is a sham filing intended only to delay the enforcement of the rights of the creditor/s or of any group of creditors,
 - (3) the petition, the Rehabilitation Plan, and the attachments thereto contain any materially false or misleading statements, or
 - (4) the debtor has committed acts of misrepresentation or fraud to its creditor/s or a group of creditors;
- (C) convert the proceedings into one for the liquidation of the debtor upon a finding that
 - (1) the debtor is insolvent and there is no substantial likelihood for the debtor to be successfully rehabilitated as determined, and
 - (2) there is failure of rehabilitation.

SEC. 18. PETITION GIVEN DUE COURSE. - If the petition is given due course, the court shall direct the rehabilitation receiver to confer with the debtor and all the classes of creditors to consider their views and proposals in the review or revision of the Rehabilitation Plan or the preparation of a new one. The Rehabilitation Plan must be submitted to the court within a period of not more than ninety (90) days from the date of the issuance of the order giving due course to the petition.

The court may refer any dispute relating to the Rehabilitation Plan or the rehabilitation proceedings pending before it to arbitration or other modes of dispute resolution, as provided for under Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004, should it determine that such mode will resolve the dispute more quickly, fairly, and efficiently than the court.

The referral to arbitration or other modes of dispute resolution shall not be made if it will prejudice the one-year period for the confirmation of the rehabilitation plan under Section 70 of the Act.

SEC. 19. DISMISSAL OF PETITION. - If the petition is dismissed pursuant to Section 17(B) of this Rule, then the court may, in its discretion, order the petitioner to pay damages to any creditor or to the debtor, as the case may be, who may have been injured by the filing of the petition, to the extent of any such injury.

(C) THE REHABILITATION RECEIVER, MANAGEMENT COMMITTEE, AND CREDITOR'S COMMITTEE

SEC. 20. WHO MAY SERVE AS A REHABILITATION RECEIVER. - Any qualified natural or juridical person may serve as a rehabilitation receiver. A rehabilitation receiver who is a juridical entity must designate, as its representative, a natural person who possesses all the qualifications and none of the disqualifications under this Rule. The juridical entity and the representative are solidarily liable for all the obligations and responsibilities of a rehabilitation receiver.

SEC. 21. QUALIFICATIONS OF A REHABILITATION RECEIVER. -

(A) The rehabilitation receiver who is a natural person must comply with the following minimum qualifications and requirements:

- (1) He is a citizen of the Philippines or a resident of the Philippines for at least six (6) months immediately preceding his nomination;
- (2) He is of good moral character and with acknowledged integrity, impartiality and independence;
- (3) As far as practicable, he has expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor;
- (4) He has an operating knowledge in management, finance and rehabilitation of distressed companies;
- (5) He has a general familiarity with the rights of creditors subject to suspension of payments or rehabilitation and a general understanding of the duties and obligations of a rehabilitation receiver;
- (6) He has not been earlier dismissed as a rehabilitation receiver pursuant to Section 27 of this Rule;
- (7) He has no conflict of interest as defined in this Rule; and
- (8) He is willing and able to file a bond in such amount as may be determined by the court.

(B) The rehabilitation receiver, which is a juridical person, must comply with the following qualifications and requirements:

- (1) It is duly authorized to do business in the Philippines for at least six (6) years prior to its appointment;
- (2) It is of good standing as certified by the appropriate regulatory agency/ies;
- (3) It has no conflict of interest as defined in this Rule;
- (4) It has not been earlier dismissed as a rehabilitation receiver pursuant to Section 27 of this Rule;
- (5) It must submit the name of the person designated to discharge the responsibilities and powers of a rehabilitation receiver and the names of the employees and other persons authorized to assist the designated representative, together with a sworn certification that these persons possess the qualifications and none of the disqualifications enumerated above;
- (6) It must submit a sworn undertaking, duly approved in accordance with law, binding itself to be solidarily liable with the persons designated by it to discharge the functions and responsibilities of a rehabilitation receiver;
- (7) It is willing and able to file a bond in such amount as may be determined by the court;
- (8) It is not disqualified to discharge the duties of a rehabilitation receiver under the Constitution and other relevant laws;

(C) In addition, the designated representative of the juridical person must comply with the following requirements:

- (1) The representative must be duly designated and authorized to act for and on behalf of the juridical entity;
- (2) The designated representative must be a director, officer, stockholder or partner of the juridical entity; and
- (3) The designated representative must submit a sworn undertaking that he shall be solidarily liable with his firm for all the obligations and responsibilities of a rehabilitation receiver.

SEC. 22. CONFLICT OF INTEREST. - No person may be appointed as a rehabilitation receiver or as a member of a management committee, or be engaged by the rehabilitation receiver or the management committee if he has a conflict of interest.

An individual shall be deemed to have a conflict of interest if he is so situated as to be materially influenced in the exercise of his judgment for or against any party to the proceedings. A conflict of interest of an individual employed or contracted by the rehabilitation receiver or the management committee or its

members shall be deemed to be a conflict of interest of the rehabilitation receiver or the management committee.

Without limiting the generality of the following, a rehabilitation receiver may be deemed to have a conflict of interest if:

- (A) he is a creditor, owner, partner or stockholder of the debtor;
- (B) he is engaged in a line of business which competes with the debtor;
- (C) he is, or was within five (5) years from the filing of the petition, a director, officer, owner, partner, or employee or the auditor or accountant of the debtor;
- (D) he is, or was within two (2) years from the filing of the petition, an underwriter of the outstanding securities of the debtor;
- (E) he is related by consanguinity or affinity within the fourth civil degree to any individual creditor, owner/s of a sole proprietorship-debtor, partners of a partnership-debtor, or to any stockholder, director, officer, employee, or underwriter of the corporation-debtor; or
- (F) he has any other direct or indirect material interest in the debtor or any creditor.

SEC. 23. DISCLOSURE OF CONFLICT OF INTEREST. – Conflict of interest as set forth in the preceding Section shall be disclosed at all times throughout the proceedings to the court and to the creditors. Further, disclosure of any conflict of interest must be made

- (A) by the nominees for the position of rehabilitation receiver before their names are submitted for appointment;
- (B) by the rehabilitation receiver and its designated representative in case of juridical person, within fifteen (15) days from the appointment as rehabilitation receiver or as a member of the management committee; and
- (C) by the rehabilitation receiver and its designated representative in case of juridical person, within ten (10) days from the time the rehabilitation receiver and/or its designated representative learns of any fact described in the preceding section while the rehabilitation proceedings are pending.

The same rule shall apply to persons who assist the rehabilitation receiver or the management committee as professionals, experts or employees. They shall file their disclosure within ten (10) days from the date they are contracted or are

employed.

SEC. 24. OBJECTION TO CONFLICT OF INTEREST. - Within ten (10) days from receipt of the disclosure of conflict of interest provided under the preceding Section, any party to the proceedings adversely affected by the appointment of the persons to the positions mentioned above may file his objection to the appointment of the rehabilitation receiver or a member of the management committee, or to the employment by them of professionals, experts or employees. The court may disregard the conflict of interest if it finds that it will not be detrimental to the general interest of the stakeholders.

Failure to file a timely objection shall be deemed a waiver of the conflict of interest rule.

Should the court decide that the objection has merit and that the conflict of interest will be detrimental to the general interest of the stakeholders, it shall dismiss the rehabilitation receiver having conflict of interest and appoint a new one. Should the person concerned be a member of the management committee or one employed by the rehabilitation receiver or the management committee as a professional or expert, the court shall dismiss the person having conflict of interest and direct the rehabilitation receiver or management committee to appoint or employ a new one in his place, as the case may be.

SEC. 25. INITIAL APPOINTMENT OF THE REHABILITATION RECEIVER. - The court shall initially appoint the rehabilitation receiver, who may or may not be from among the nominees of the petitioner. At the initial hearing of the petition, the creditors and the debtor who are not petitioners may nominate other persons to the position. The court may retain the rehabilitation receiver initially appointed or appoint another who may or may not be from among those nominated.

In case the debtor is a securities market participant, the court shall give priority to the nominee of the appropriate securities or investor protection fund.

If a qualified natural person or entity is nominated by more than fifty percent (50%) of the secured creditors and the general unsecured creditors, and satisfactory evidence of the creditors' support is submitted, the court shall appoint the creditors' nominee as rehabilitation receiver.

SEC. 26. POWERS, DUTIES AND FUNCTIONS OF REHABILITATION RECEIVER. - The rehabilitation receiver shall be deemed an officer of the court with the principal duty of preserving and maximizing the value of the assets of the debtor during the rehabilitation proceedings, determining the viability of the rehabilitation of the debtor, preparing and recommending a Rehabilitation Plan to the court, and implementing the approved Rehabilitation Plan.

To this end, and without limiting the generality of the foregoing, the rehabilitation receiver shall have the following powers, duties and responsibilities:

- (A) to verify the accuracy of the petition, and correct, if necessary, the annexes such as the Schedule of Debts and Liabilities and the Inventory of Assets submitted in support to the petition;
- (B) to accept and incorporate, when justified, amendments to the Schedule of Debts and Liabilities;
- (C) to evaluate the validity, genuineness and true amount of all the claims against the debtor and to recommend to the court the disallowance of claims and rejection of amendments to the Schedule of Debts and Liabilities that lack sufficient proof and justification;
- (D) to submit to the court, and make available for the creditors' review, a revised Schedule of Debts and Liabilities;
- (E) to investigate the acts, conduct, properties, liabilities and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a Rehabilitation Plan;
- (F) to sue and recover, with the approval of the court, all amounts owed to, and all properties pertaining to the debtor, including all property or money of the debtor paid, transferred or disbursed in fraud of the debtor or its creditors, or which constitute undue preference of creditor/s;
- (G) to examine under oath the directors and officers of the debtor and any other witnesses that he may deem appropriate;
- (H) to make available to the creditors the documents and notices necessary for them to follow and participate in the proceedings;
- (I) to report to the court any fact ascertained by him to pertain to the causes of the debtor's problems, fraud, preferences, dispositions, encumbrances, misconduct, mismanagement and irregularities committed by the stockholders, directors, management, or any other person against the debtor;
- (J) to employ such specialized professionals and other experts such as lawyers, accountants, auditors, appraisers and staff, with the approval of the court, whose services are necessary in assisting the rehabilitation receiver in performing his duties and functions in accordance with Section 37 of this Rule;
- (K) to monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business;

- (L) to evaluate the existing assets and liabilities, earnings and operations of the debtor;
- (M) to determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders and the general public;
- (N) to study the Rehabilitation Plan proposed by the debtor or any Rehabilitation Plan submitted during the proceedings, together with any comments made thereon;
- (O) to prohibit and report to the court any encumbrance, transfer or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court;
- (P) to prohibit and report to the court any payments made by the debtor outside of the ordinary course of business;
- (Q) to have unlimited access to the debtor's employees, premises, books, records and financial documents during business hours;
- (R) to inspect, copy, photocopy or photograph any document, paper, book, account or letter, whether in the possession of the debtor or other persons, that pertain to the business of the debtor;
- (S) to gain entry into any property owned by the debtor for the purpose of inspecting, measuring, surveying or photographing it or any designated relevant object or operation thereon;
- (T) to take possession, control and custody, and to preserve the value of all of the debtor's assets;
- (U) to notify counterparties and the court as to contracts that the debtor has decided to confirm, pursuant to Section 56 of this Rule;
- (V) to be notified of and to attend all meetings of the board of directors and stockholders of the debtor;
- (W) to recommend any modification of an approved Rehabilitation Plan as he may deem appropriate;
- (X) to bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the Rehabilitation Plan;
- (Y) to recommend the appointment of a management committee in the cases provided for under Section 31 of this Rule;

- (Z) within the soonest possible time, to submit a report to the management committee, if one has been constituted pursuant to Section 31 of this Rule, on the status and condition of the debtor and on the actions taken by the receiver with regard to the proceedings;
- (AA) to recommend the termination of the proceedings and the dissolution of the debtor if he determines that the debtor's continuance in business is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors or the general public;
- (BB) to apply to the court for any order or directive that he may deem necessary or desirable to aid him in the exercise of his powers and performance of his duties and functions;
- (CC) to make quarterly reports on the status and progress of the rehabilitation, or as often as may be required by the court; and
- (DD) to exercise such other powers as may from time to time be conferred upon him by the court.

The court may limit the powers and functions of the rehabilitation receiver, as may be appropriate.

SEC. 27. REMOVAL OF THE REHABILITATION RECEIVER. – The rehabilitation receiver may be removed at any time by the court, either *motu proprio* or upon motion by the debtor or any creditor/s holding more than fifty percent (50%) of the total obligations of the debtor, on such grounds as these Rules may provide, which shall include, but not limited to, the following:

- (A) incompetence, gross negligence, failure to perform or failure to exercise the proper degree of care in the performance of his duties and powers;
- (B) lack of a particular or specialized competency required by the specific case;
- (C) illegal acts or conduct in the performance of his duties and powers;
- (D) lack of qualification or presence of any disqualification;
- (E) conflict of interest that arises after his appointment;
- (F) manifest lack of independence that is detrimental to the general body of the stakeholders;
- (G) failure, without just cause, to perform any of his powers and functions under these Rules; or

- (H) on any of the grounds for removing a trustee under the general principles of trusts.

SEC. 28. COMPENSATION AND TERMS OF SERVICE. –

(A) The rehabilitation receiver and his direct employees or independent contractors shall be entitled to compensation, to be paid by the debtor, for reasonable fees and expenses according to the terms approved by the court after notice and hearing. Prior to such hearing, the rehabilitation receiver, his direct employees and his independent contractors shall be entitled to reasonable compensation based on *quantum meruit*. Such costs shall be considered administrative expenses.

In determining the amount of reasonable compensation, the court shall consider the nature, extent and value of the services provided, taking into account the following factors, among others:

- (1) the size of the debt under rehabilitation;
- (2) the time to be spent on such services;
- (3) the credentials, experience, skills and reputation of the receiver, his direct employees or independent contractors;
- (4) the benefits accruing to the debtor;
- (5) the complexity, importance, urgency, and nature of the problems, issues, or tasks addressed; and
- (6) the customary compensation charged by comparably skilled practitioners in other rehabilitation cases.

(B) If any substantial or material change in the circumstances intervenes affecting the compensation fixed, the court may, upon motion of the debtor, rehabilitation receiver, or the creditors, order a review or revision of the compensation set by the court.

(C) The rehabilitation receiver and his direct employees or independent contractors shall disclose in writing, at the earliest opportunity, to the court, with notice to all the parties, all forms of arrangements or agreements in the handling of the receivership such as, but not limited to, commissions, fees, fee-sharing arrangements, and payments in kind. Failure to comply with this duty shall be a ground for removal from office of the person concerned and for forfeiture of the rehabilitation receiver's bond.

SEC. 29. OATH AND BOND. - Prior to entering upon his powers, duties and responsibilities, the rehabilitation receiver shall take an oath and file a bond in the amount fixed by the court, conditioned upon the faithful and proper discharge of his powers, duties and responsibilities.

SEC. 30. VACANCY. – In case the position of rehabilitation receiver is vacated for any reason whatsoever, the court shall direct the debtor and the creditors to

submit the name/s of their nominee/s to the position. The court may appoint any of the qualified nominees, or any other person qualified.

In case the rehabilitation receiver is a juridical person and its designated representative resigns or is otherwise separated from it, it must manifest to the court this fact and the reason/s for the separation, within ten (10) days from its occurrence, together with the name and other personal circumstances of the new representative. The new representative must have the qualifications and none of the disqualifications set forth in Section 21 of this Rule.

SEC. 31. DISPLACEMENT OF EXISTING MANAGEMENT BY THE REHABILITATION RECEIVER OR MANAGEMENT COMMITTEE. – Upon motion of any interested party and within the soonest possible time, the court may appoint and direct the rehabilitation receiver to assume the powers of management of the debtor, or appoint a management committee that will undertake the management of the debtor, upon clear and convincing evidence of any of the following circumstances:

- (A) actual or imminent danger of dissipation, loss, wastage or destruction of the debtor's assets or other properties; or
- (B) paralyzation of the business operations of the debtor; or
- (C) gross mismanagement of the debtor, fraud or other wrongful conduct on the part of, or gross or willful violation of the Act by the existing management of the debtor or the owner, partner, director, officer or representative/s in management of the debtor.

In case the court appoints the rehabilitation receiver to assume the management of the debtor, the court may:

- (1) require the rehabilitation receiver to post an additional bond;
- (2) authorize him to engage the services or to employ persons or entities to assist him in the discharge of his managerial functions; and
- (3) authorize a commensurate increase in his compensation.

In case the rehabilitation receiver is a juridical person, the acts of its designated representative shall be presumed to be carried out in accordance with the authority vested in him by the juridical entity which he represents. In case of conflict, the decision of the governing body of the juridical entity shall prevail. However, the rehabilitation receiver and its representative/s shall remain solidarily liable for all obligations and responsibilities, subject to the right of withdrawal prior to the implementation of the disputed decision.

SEC. 32. ROLE OF THE REHABILITATION RECEIVER UPON ASSUMPTION OF MANAGEMENT OF THE DEBTOR. – When directed by the court to assume management of the debtor as provided in the foregoing section, the rehabilitation receiver shall continue to exercise the same powers under Section 26 of this Rule in addition to those powers and duties expressly given to the

management committee as provided in the succeeding section or those necessarily implied therefrom.

SEC. 33. ROLE OF THE MANAGEMENT COMMITTEE. – When appointed pursuant to Section 31 of this Rule, the management committee shall have the power to take custody of and control all assets and properties owned or possessed by the debtor. It shall take the place of the management and governing body of the debtor, and assume their powers, rights and responsibilities.

The management committee may overrule or revoke the actions of the previous management or the governing body of the debtor.

Without limiting the generality of the foregoing, the specific powers and duties of the management committee, whose members shall also be considered as officers of the court, are the following:

- (A) to investigate the acts, conduct, properties, liabilities, and financial condition of the corporation, association or partnership under management;
- (B) to examine under oath the directors and officers of the entity and any other witnesses that the committee may deem appropriate;
- (C) to report to the court any ascertained fact pertaining to the causes of the problems, fraud, misconduct, mismanagement and irregularities committed by any other person;
- (D) to use the services of or employ such person or persons, such as lawyers, accountants, auditors, appraisers and staff as are necessary to perform its functions and duties as management committee;
- (E) to report to the court any material adverse change in the business of the entity under management;
- (F) to evaluate the existing equity, capital, assets and liabilities, earnings and operations of the entity under management;
- (G) to determine and recommend to the court the best way to salvage and protect the interest of the creditors, stockholders and the general public, including the rehabilitation of the entity under management;
- (H) to prohibit and report to the court any encumbrance, transfer, or disposition of the debtor's property outside of the ordinary course of business or beyond what is allowed by the court;
- (I) to prohibit and report to the court payments made outside the ordinary course of business;
- (J) to have unlimited access to the employees, premises, books, records and financial documents of the entity under management during business hours;
- (K) to inspect, copy, photocopy or photograph any document, paper, book, account or letter, whether in the possession of the entity or other persons, that pertain to the business of the debtor;
- (L) to gain entry into any property owned by the entity under management for the purposes of inspecting, measuring, surveying, or taking photos or videos of any designated relevant object or operation thereon;

- (M) to bring to the attention of the court any material change affecting the entity's ability to meet its obligations;
- (N) to take the appropriate steps to modify, nullify or revoke transactions coming to its knowledge which it deems detrimental or prejudicial to the interest of the entity under management;
- (O) to recommend the termination of the proceedings and the dissolution of the entity if it determines that the continuance in business of such entity will no longer work to the best interest of the stakeholders and creditors, in accordance with the purposes of the Act;
- (P) to apply to the court for any order or directive that it may deem necessary or desirable to aid it in the exercise of its powers and performance of its duties and functions, including the power to examine parties and witnesses under oath; and
- (Q) to exercise such other powers as the court may, from time to time, confer upon it.

The court may limit the powers and functions of the appointed management committee, as may be appropriate.

SEC. 34. COMPOSITION OF THE MANAGEMENT COMMITTEE. – Unless the court otherwise provides, the management committee appointed pursuant to Section 31 of this Rule shall be composed of three (3) qualified members appointed by the court, as follows:

- (A) the first member shall be nominated by the debtor; in case the debtor fails, the court shall appoint the first member;
- (B) the second member shall be nominated by the creditor/s holding more than fifty percent (50%) of the total obligations of the debtor; in case the creditors fail, the court shall appoint the second member; and
- (C) the third member, who shall act as chairman of the management committee, shall be nominated by the first and second members within ten (10) days from the appointment. In case of disagreement between the first and second members, or failure to nominate, the court shall appoint the third member.

In case the decision to appoint a management committee is due to Section 31(c) of this Rule, the court shall appoint the first member.

In all cases, the court may

- (1) require the members of the management committee to post a bond;
- (2) authorize the management committee to employ or engage the services or to employ or engage persons or entities to assist it in the discharge of its duties and functions, pursuant to Section 37 of this Rule on the employment or use of professionals; and
- (3) authorize the setting of the compensation of the members of the management committee, pursuant to Section 28 of this Rule.

SEC. 35. ACTION BY MANAGEMENT COMMITTEE. — A majority of all members shall be necessary for the management committee to act or make a decision.

SEC. 36. QUALIFICATIONS OF MEMBERS OF THE MANAGEMENT COMMITTEE. - The members of the management committee shall have the same qualifications and none of the disqualifications as those prescribed for the rehabilitation receiver by this Rule.

In case a member of the management committee is a juridical person, the relevant provisions governing juridical persons as rehabilitation receivers shall apply.

SEC. 37. EMPLOYMENT OR USE OF PROFESSIONALS. – The rehabilitation receiver or the management committee shall submit the identities and other personal circumstances of the professionals or experts they want to engage or to assist them in the exercise of their powers and functions. Court approval shall be made after notice and hearing, taking into account the following factors, among others:

- (A) reasons for the appointment;
- (B) disclosure of conflict of interest;
- (C) compensation, fees, or other arrangements;
- (D) scope of work involved;
- (E) the specific area of expertise of the person to be appointed;
- (F) confidentiality;
- (G) expected work time to be spent in relation to the engagement and extent of services required; and
- (H) other arrangements, as the court may deem appropriate.

The persons engaged by the rehabilitation receiver or the management committee may be considered either employees or independent contractors, as the case may be.

SEC. 38. IMMUNITY FROM SUIT. - The rehabilitation receiver, the members of the management committee, and all persons they engage shall not be subject to any action, claim or demand for any act or omission in good faith in the exercise of their powers and functions under the Act, these Rules, or other actions approved by the court.

SEC. 39. ORGANIZATION OF THE CREDITORS' COMMITTEE. – After the petition is given due course, the court shall issue an order directing the rehabilitation receiver to call a meeting with the debtor and all classes of creditors, to take place in not less than two (2) weeks nor more than four (4) weeks from the date of the order, to consider the organization of a creditors' committee. The order shall designate the day, hour and place of the meeting, and shall be published as often as may be prescribed by the court, but in no case less than two (2) consecutive weeks, in a newspaper of general circulation in the Philippines, if there

be one, and if there be none, in a newspaper which, in the court's judgment, will best give notice to the creditors of the debtor. The debtor shall be personally notified of this order.

After this meeting is called and held, the creditors belonging to a class may formally organize a committee among themselves. In addition, the creditors may, as a body, agree to form a creditors' committee composed of a representative from each class of creditors, such as the following:

- (A) secured creditors;
- (B) unsecured creditors;
- (C) trade creditors and suppliers; and
- (D) employees of the debtor.

A creditors' committee may be organized if the creditors, representing at least a majority of all the claims as reflected in the registry of claims determined pursuant to Section 44 of this Rule, cast their votes for its creation.

SEC. 40. ELECTION OF REPRESENTATIVES TO THE CREDITORS' COMMITTEE. - The creditors from each class shall be entitled to elect their representative to the creditors' committee. Each creditor shall vote in proportion to his interest vis-à-vis the total claims of all the creditors within the same class as determined by the rehabilitation receiver based on the registry of claims submitted to the court under Section 44 of this Rule, provided, that such determination shall only be for the purpose of voting under this section and shall not be binding on any creditor as to the nature and amount of its claim.

In case of a juridical creditor, the designated representative bearing the necessary authority shall be entitled to vote.

Voting may be done personally, by mail or by proxy, provided that if a vote is cast through mail or by proxy, the same should be accompanied by the necessary authority to cast the vote for the particular creditor. Voting by electronic mail or means shall be in accordance with the Rules on Electronic Evidence.

SEC. 41. ELECTION OF CHAIRMAN OF THE CREDITORS' COMMITTEE. - When the representatives of each class of creditors to the creditors' committee have been elected, the rehabilitation receiver shall convene the chosen representatives to elect the chairman of the creditors' committee.

The representative of each class of creditors shall be entitled to cast only one (1) vote in the election of the chairman of the creditors' committee. Any tie shall be resolved by drawing of lots.

The chairman shall then be responsible for convening the creditors' committee, whenever necessary, to discuss, deliberate, and confer with the rehabilitation receiver, on any view or proposal in the preparation, review or revision of a Rehabilitation Plan for the debtor.

SEC. 42. ROLE OF CREDITORS' COMMITTEE. - The creditors' committee, when constituted pursuant this Rule, shall be the primary liaison between the rehabilitation receiver and the creditors. The creditors' committee cannot exercise or waive any right or give any consent on behalf of any creditor unless specifically authorized in writing by such creditor. The creditors' committee may be authorized by the court or by the rehabilitation receiver to perform such other tasks and functions to facilitate the rehabilitation process.

The creditors' committee's act shall be valid if a majority of its members voted, and a majority of the members who have cast their votes have voted in favor of the resolution.

The creditors' committee, if already constituted, shall be notified of all actions relative to the rehabilitation proceedings; otherwise, the individual creditors shall be so notified by the rehabilitation receiver.

The members of the creditors' committee shall be entitled to a reasonable fee as compensation, which shall be treated as an administrative expense, subject to the prior determination and approval by the court.

SEC. 43. DETERMINATION OF CLASS OF CREDITORS. - The rehabilitation receiver shall determine within a reasonable time the class to which each creditor belongs; provided that each creditor shall be given the opportunity to challenge the rehabilitation receiver's determination of its classification by presenting evidence to prove its claims. Such challenge shall first be brought before the rehabilitation receiver for his reconsideration within five (5) days from notice of such determination by the rehabilitation receiver. Any denial by the rehabilitation receiver of such challenge may be brought to the court within five (5) days from notice thereof. The decision of the court on this matter shall be final and executory only insofar as the classification of the said creditor for purposes of representation in the creditors' committee is concerned but not as to the determination of the nature of its claim.

(D) DETERMINATION OF CLAIMS

SEC. 44. REGISTRY OF CLAIMS. - Within twenty (20) days from his assumption into office, the rehabilitation receiver shall establish a preliminary registry of claims based on the schedule of debts and liabilities provided in the petition. The rehabilitation receiver shall make the registry available for public inspection and give notice to the debtor, creditors and stakeholders on where and when they may inspect it by causing the publication of the place/s and date/s of inspection in a newspaper of general circulation in the Philippines once every week for two (2) consecutive weeks. The period of inspection shall not exceed fifteen (15) days from the last publication. All claims included in the registry of claims must be duly supported by sufficient evidence.

SEC. 45. OPPOSITION OR CHALLENGE OF CLAIMS. - Within thirty (30) days from the expiration of the period to inspect the registry of claims, the debtor,

creditors, stakeholders and other interested parties may submit to the court a challenge to the claim/s, as listed in the registry of claims serving a certified copy on the rehabilitation receiver and the creditor holding the challenged claim/s.

Upon the expiration of the thirty (30)-day period, the rehabilitation receiver shall submit to the court the registry of claims. The registry of claims shall include the following lists of (1) claims that have not been subject to challenge; (2) claims resolved by the rehabilitation receiver after these have been challenged; and (3) disputed but unresolved claims.

SEC. 46. APPEAL. – The aggrieved party may seek the review of the decision of the rehabilitation receiver on a claim by filing a motion with the rehabilitation court within five (5) days from receipt of the rehabilitation receiver's assailed decision, which shall be decided by the court at the soonest possible time.

**(E) USE, PRESERVATION AND DISPOSAL OF ASSETS AND
TREATMENT OF ASSETS AND CLAIMS AFTER
COMMENCEMENT DATE**

SEC. 47. USE OR DISPOSITION OF ASSETS. - Except as otherwise provided herein, no funds or property of the debtor shall be used or disposed of except in the ordinary course of business of the debtor, or unless necessary to finance the administrative expenses of the rehabilitation proceedings.

SEC. 48. SALE OF ASSETS. - The court, upon the rehabilitation receiver's application, with notice to the debtor, creditors or creditors' committee, if one has already been formed, may authorize the sale of the unencumbered property of the debtor outside the ordinary course of business upon a showing that the property, by its nature or because of any other circumstance, is (a) perishable; (b) costly to maintain; (c) susceptible to devaluation; or (d) otherwise in jeopardy.

The application shall be through a motion which shall be served on the debtor and the creditors in a manner that will ensure its receipt at least three (3) days before the hearing, unless the court for good reason sets the hearing on shorter notice. If the creditors' committee had already been formed, the motion shall be served on the creditors' committee.

If the court grants the motion, the order shall specify the cause for the necessity of the sale, which may either be through a public auction or a private sale, determined to be in the best interest of all parties.

Unless impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole (if sold in bulk) shall be filed with the court on completion of a sale.

After a sale is authorized under this Section, the rehabilitation receiver shall execute any instrument necessary or ordered by the court to transfer the property to the purchaser.

SEC. 49. SALE OR DISPOSAL OF ENCUMBERED PROPERTY OF THE DEBTOR AND ASSETS OF THIRD PARTIES HELD BY DEBTOR. –

- (A) In cases of
- (1) encumbered property belonging to the debtor, or
 - (2) property of third persons held by the debtor where there is a security interest pertaining to third parties under a financial, credit or other similar transactions,

the court may, upon the rehabilitation receiver's application, after due notice and hearing, authorize the sale, transfer, conveyance or disposition of the property, upon a showing that:

- (A) the affected owner or secured creditor/s have given their consent;
 - (B) the sale, transfer, conveyance or disposal is necessary for the continued operation of the debtor's business; and
 - (C) the debtor has made arrangements to provide a substitute lien or ownership right that provides an equal level of security for the counter-party's claim or right.
- (B) In cases where the debtor has prior authority to sell the property such as trust receipt or consignment arrangements, the court may, upon the debtor's application, authorize the sale or disposal of the property, upon a showing that:
- (1) the sale or disposal is necessary for the operation of the debtor's business, and
 - (2) the debtor has made arrangements to provide a substitute lien or ownership right that provides an equal level of security for the counter-party's claim or right.

- (C) The application shall be through a motion which shall be served on the debtor and the owner/s or concerned creditors in a manner that will ensure its receipt at least three (3) days before the hearing, unless the court for good reason sets the hearing on shorter notice. If the creditors' committee has already been formed, the motion shall be served on the creditors' committee.

The affected party is given a non-extendible period of three (3) days from receipt of the motion within which to file his comment or opposition. The court shall resolve the motion within five (5) days from the date of the hearing.

- (D) If the court grants the motion, the order shall specify the manner by which the sale shall be conducted which may either be a public auction or private sale and other terms and conditions that the court may, in its discretion, determine to be in the best interest of all concerned parties.

- (E) Unless impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed with the court on completion of a sale.

- (F) After a sale or disposition is authorized under this Section, the rehabilitation receiver or debtor, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.
- (G) The sale or disposal of property under this Section shall not give rise to any criminal liability under applicable laws.

SEC. 50. ASSETS OF DEBTOR HELD BY THIRD PARTIES. – Third parties who have in their possession or control property of the debtor that is subject of possessory pledges, mechanic's liens or similar claims shall not transfer, convey or otherwise dispose of the property to persons other than to the debtor, except with prior approval of the rehabilitation receiver.

The rehabilitation receiver may also

- (A) demand the surrender or the transfer of the possession or control of the property to the rehabilitation receiver or another person, subject to payment of the claims secured by any possessory lien/s thereon or the replacement of the possessory lien, with the consent of the secured creditor;
- (B) allow the third party to retain possession or control of the property if such an arrangement would more likely preserve or increase the value of the property in question or the total value of the assets of the debtor; or
- (C) otherwise dispose of the property as may be beneficial for the rehabilitation of the debtor, after notice and hearing and approval of the court, subject to payment of the claims secured by any possessory lien/s thereon or replacement of the possessory lien with the consent of the secured creditor.

SEC. 51. RESCISSION OR NULLITY OF SALE, PAYMENT, TRANSFER OR CONVEYANCE OF ASSETS. – Upon motion, after notice and hearing, the court may rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbering thereof by the debtor or its agents or representatives after the commencement date which are not in the ordinary course of the business of the debtor.

The following sales or dispositions, made outside of the ordinary course of business of the debtor, upon order of the court, upon motion and after notice and hearing, may not be nullified under this Section if made for the following purposes:

- (A) to administer the debtor and facilitate the preparation and implementation of a Rehabilitation Plan;
- (B) to provide a substitute lien, mortgage or pledge of property under this Rule;
- (C) to pay or meet administrative expenses as they arise;

- (D) to pay victims of quasi-delicts upon a showing that the claim is valid and the debtor has insurance to reimburse the debtor for the payments made;
- (E) to repurchase property of the debtor that is auctioned off in a judicial or extrajudicial sale under these Rules; or
- (F) to reclaim or redeem property of the debtor held pursuant to a possessory lien.

SEC.52. ASSETS SUBJECT TO RAPID OBSOLESCENCE, DEPRECIATION AND DIMINUTION OF VALUE. – Upon the application of a secured creditor holding a lien against or one holding an ownership interest in property held by the debtor that is subject to potentially rapid obsolescence, depreciation or diminution in value, the court shall, after notice and hearing, order the debtor or rehabilitation receiver to take reasonable steps necessary to prevent the obsolescence, depreciation or diminution of the value of the property. If such rapid obsolescence, depreciation and diminution cannot be avoided to the prejudice of the security or property interest of the secured creditor or owner, the court shall:

- (A) allow the encumbered property to be foreclosed upon by the secured creditor according to the relevant agreement between the debtor and the secured creditor, applicable rules of procedure, and relevant legislation: Provided, That the proceeds of the sale will be distributed in accordance with the order prescribed under the rules of concurrence and preference of credits (including Civil Code provisions thereon);
- (B) upon motion or with the consent of the affected secured creditor or interest owner, order the conveyance of a lien against or ownership interest in substitute property of the debtor to the secured creditor: Provided, That other creditors holding liens on such property, if any, do not object thereto, or, if such property is not available;
- (C) order the conveyance to the secured creditor or holder of an ownership interest of a lien on the residual funds from the sale of encumbered property during the proceedings; or
- (D) allow the sale or disposition of the property: Provided, That the sale or disposition will maximize the value of the property for the benefit of the secured creditor and the debtor, and the proceeds of the sale will be distributed in accordance with the order prescribed under the rules of concurrence and preference of credits (including Civil Code provisions thereon).

The application of the secured creditor shall be made by motion and shall be served on the debtor, the rehabilitation receiver, the affected creditors, and the creditors' committee (if one had already been formed), in a manner that will ensure its receipt at least three (3) days before the hearing, unless the court, for good reason shown, sets the hearing on shorter notice.

SEC. 53. POST-COMMENCEMENT INTEREST. – The rate and term of interest, if any, on secured and unsecured claims shall be determined and provided for in the approved Rehabilitation Plan.

SEC. 54. POST-COMMENCEMENT LOANS AND OBLIGATIONS. – With the approval of the court, upon the duly supported recommendation of the rehabilitation receiver, the debtor, in order to enhance its rehabilitation, may

- (A) enter into new credit arrangements, excluding restructured obligations;
- (B) enter into new credit arrangements (excluding restructured obligations), secured by mortgages of its unencumbered property or secondary mortgages of encumbered property with the approval of the senior secured parties with regard to the encumbered property; or
- (C) incur other obligations as may be essential for its rehabilitation.

The payment of the foregoing obligations shall be considered administrative expenses under these Rules.

SEC. 55. TREATMENT OF EMPLOYEES' CLAIMS. – The claims for separation pay and salary of employees for months worked prior to the commencement date shall be considered a pre-commencement claims. The compensation of employees required to carry on the business during the rehabilitation proceedings shall be considered an administrative expense. Claims for salary and separation pay for work actually performed after the commencement date shall be an administrative expense.

SEC. 56. TREATMENT OF CONTRACTS. – Unless cancelled by virtue of a final judgment of a court of competent jurisdiction issued prior to the issuance of the Commencement Order, or at anytime thereafter by the court before which the rehabilitation proceedings are pending, all valid and subsisting contracts of the debtor with creditors and other third parties as of the commencement date shall continue to be in force; Provided, That within ninety (90) days following the issuance of the Commencement Order, the debtor, with the written consent of the rehabilitation receiver, shall send a written notice to each contractual counter-party stating that it is confirming the particular contract. Contractual obligations of the debtor arising or performed during this period, and afterwards for confirmed contracts, shall be considered administrative expenses.

Contracts not confirmed within the 90-day deadline shall be considered automatically terminated. Claims for actual damages, if any, arising as a result of the election to terminate a contract shall be considered pre-commencement claims against the debtor, to be filed with the rehabilitation court as a separate claim. The claim shall be considered in the rehabilitation plan together with the other claims against the debtor.

Nothing contained herein shall prevent the cancellation or termination of any contract of the debtor for any ground provided by law.

(F) AVOIDANCE PROCEEDINGS

SEC. 57. RESCISSION OR NULLITY OF CERTAIN PRE-COMMENCEMENT TRANSACTIONS. – Any transaction prior to the commencement date entered into by the debtor or involving its funds or assets may be rescinded or declared null and void on the ground that it was executed with intent to defraud a creditor or creditors or that it constitutes undue preference of creditors. Without limiting the generality of the foregoing, a disputable presumption of these designs shall arise if the transaction:

- (A) provides unreasonably inadequate consideration to the debtor and is executed within ninety (90) days prior to the commencement date;
- (B) involves an accelerated payment of a claim to a creditor within ninety (90) days prior to the commencement date;
- (C) provides security or additional security executed within ninety (90) days prior to the commencement date;
- (D) involves creditors who obtained or received more than their pro rata share in the assets of the debtor, on a transaction executed at a time when the debtor was insolvent; or
- (E) is intended to defeat, delay or hinder the ability of the creditors to collect claims, where the effect of the transaction is to put assets of the debtor beyond the reach of creditors or to otherwise prejudice the interests of creditors.

Nothing in this Section shall prevent the court from rescinding or declaring as null and void a transaction on other grounds provided by relevant legislation and jurisprudence, including the provisions of the Civil Code on rescission.

SEC. 58. ACTIONS FOR RESCISSION OR NULLITY. –

- (A) The rehabilitation receiver or, with his conformity, any creditor may initiate and prosecute any action to rescind, or declare null and void any transaction described in Section 57 of this Rule.

If the rehabilitation receiver does not consent to the filing or prosecution of such action, any creditor or the creditors' committee may file and/or prosecute such action upon the approval of the court and after a determination that the rights of the creditors will be prejudiced if the action is not filed and/or prosecuted.

- (B) If leave of court is granted under subsection (A), the rehabilitation receiver shall assign and transfer to the creditor or the creditors' committee all rights, title and interest in the chose in action or subject matter of the proceeding, including any document in support thereof.

Any benefit derived from a proceeding instituted by the creditor, to the extent of his claim and the costs, belongs exclusively to him, and the surplus, if any, belongs to the estate.

Where, before an order is made under subsection (a), the rehabilitation receiver (or liquidator) signifies to the court his readiness to institute the

proceeding for the benefit of the creditors, the order shall fix the time within which he shall do so and, in that case, the benefit derived from the proceeding, if instituted within the time limits so fixed, belongs to the estate.

The action shall be filed in the court and shall be governed by the rules on summary procedure.

(G) TREATMENT OF SECURED CREDITORS

SEC. 59. NO DIMINUTION OF SECURED CREDITOR RIGHTS. – The issuance of the Commencement Order and the Suspension or Stay Order, and any other provision of the Act, shall not in any way diminish or impair the security or lien of a secured creditor, or the value of his lien or security, except that his right to enforce the security or lien may be suspended during the term of the Stay Order.

The court, upon motion or recommendation of the rehabilitation receiver, may allow a secured creditor to enforce his security or lien, or foreclose upon property of the debtor securing his/its claim, if the property is not necessary for the rehabilitation of the debtor. The secured creditor and/or the other lien holders shall be admitted to the rehabilitation proceedings only for the balance, if any, of his claim.

SEC. 60. LACK OF ADEQUATE PROTECTION. - The court, on motion or *motu proprio*, may terminate, modify or set conditions for the continuance of suspension of payment, or relieve a claim from the coverage thereof, upon showing that: (a) a creditor does not have adequate protection over the property securing its claim; or (b) the value of a claim secured by a lien on property which is not necessary for rehabilitation of the debtor exceeds the fair market value of the property.

For purposes of this Section, a creditor shall be deemed to lack adequate protection if it can be shown that

- (A) the debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;
- (B) the debtor fails or refuses to take commercially reasonable steps to maintain the property; or
- (C) the property has depreciated to an extent that the creditor is under-secured.

Upon showing of the creditor's lack of protection, the court shall order the debtor or the rehabilitation receiver to make arrangements to provide for the insurance or maintenance of the property, or to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may modify the Stay Order to allow the secured creditor, lacking adequate protection, to enforce its security claim against the debtor: Provided, however, That the court may deny the creditor the remedies in this paragraph if the property subject of the enforcement is required for the rehabilitation of the debtor.

If a motion is filed, it must be served on the debtor and the rehabilitation receiver in a manner that will ensure its receipt at least three (3) days before the hearing, unless the court, for good reason shown, sets the hearing on shorter notice. If a creditors' committee has been formed, the motion shall also be served on the creditors' committee.

(H) ADMINISTRATION OF PROCEEDINGS

SEC. 61. CONTENTS OF A REHABILITATION PLAN. - The Rehabilitation Plan, as a minimum, shall

- (A) specify the underlying assumptions, the financial goals and procedures proposed to accomplish these goals, including the duration and coverage of the rehabilitation;
- (B) contain a liquidation analysis setting out for each creditor or each class of creditor, as applicable, the amounts they expect to receive under the Rehabilitation Plan and those that they will receive if liquidation ensues within one hundred twenty (120) days after the filing of the petition;
- (C) contain information sufficient to give the various classes of creditors a reasonable basis for determining whether supporting the Plan is in their financial interest when compared to the immediate liquidation of the debtor, including any reduction of principal interest and penalties payable to the creditors;
- (D) establish classes of voting creditors;
- (E) establish subclasses of voting creditors if prior approval has been granted by the court;
- (F) indicate how the insolvent debtor will be rehabilitated, among others, through: debt forgiveness; debt rescheduling; reorganization or quasi-reorganization; *dacion en pago*; debt-to-equity conversion; payment of unpaid subscriptions by shareholders; sale of the business as a going concern; setting-up of a new business entity or other similar arrangements, to restore the financial well-being and viability of the insolvent debtor;
- (G) specify the treatment of each class or subclass described in subsections (D) and (E);
- (H) provide for equal treatment of all claims within the same class or subclass, unless a particular creditor agrees to a less favorable treatment;
- (I) ensure that the payments made under the Rehabilitation Plan (which shall include proposed dates of payment and specific amounts on such dates to be paid to each and every creditor) will follow the priority established under the provisions of the Civil Code on concurrence and preference of credits and other applicable laws;
- (J) maintain the security interest of secured creditors and preserve the liquidation value of the security unless this has been waived or modified voluntarily;
- (K) include relevant foreign ownership limits or information, if any;

- (L) disclose all payments to creditors for pre-commencement debts made during the proceedings and the justifications for these payments;
- (M) describe the disputed claims and the provisioning of funds to account for appropriate payments should the claim be ruled valid or its amount adjusted;
- (N) identify the debtor's role in the implementation of the Rehabilitation Plan;
- (O) state any rehabilitation covenants of the debtor, whose breach shall be considered a material breach of the Rehabilitation Plan;
- (P) identify those responsible for the future management of the debtor and the supervision and implementation of the Rehabilitation Plan, their affiliation with the debtor and their remuneration;
- (Q) address the treatment of claims arising after the confirmation of the Rehabilitation Plan;
- (R) require the debtor and its counter-parties to adhere to the terms of all contracts that the debtor has chosen to confirm;
- (S) arrange for the payment of all outstanding administrative expenses as a condition to the Rehabilitation Plan's approval unless such condition has been waived in writing by the creditors concerned;
- (T) arrange for the payment of all outstanding taxes and assessments, or an adjusted amount pursuant to a compromise settlement with the BIR or other applicable tax authorities;
- (U) include a certified copy of a certificate of tax clearance or evidence of a compromise settlement with the BIR;
- (V) include a valid and binding resolution of a meeting of the debtor's stockholders to increase the shares by the required amount in cases where the Rehabilitation Plan contemplates an additional issuance of shares by the debtor;
- (W) state the compensation and status, if any, of the rehabilitation receiver before and after the approval of the Rehabilitation Plan;
- (X) contain provisions for conciliation and mediation as a prerequisite to court assistance or intervention;
- (Y) include material financial undertakings or commitments to support the Rehabilitation Plan;
- (Z) contain provisions for monitoring the implementation of the Rehabilitation Plan, including, requiring the rehabilitation receiver and/or debtor to make reports from time to time;
- (AA) contain the manner of its implementation, giving due regard to the interests of secured creditors such as the non-impairment of their security liens or interests; and
- (BB) contain such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the Rehabilitation Plan.

The court may require such other information it may deem necessary to determine the viability of the Rehabilitation Plan.

SEC. 62. CREDITOR APPROVAL OF REHABILITATION PLAN. – The rehabilitation receiver shall notify the creditors and stakeholders that the Rehabilitation Plan is ready for their examination. Within twenty (20) days from the date of the notification, the rehabilitation receiver shall convene the creditors, either as a whole or per class, for purposes of voting on the approval of the Rehabilitation Plan. Voting may be done in person, by a duly authorized representative, or by mail, including secure electronic mail, received on or before the meeting.

The Rehabilitation Plan shall be deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the Plan.

For purposes of this Section, the Rehabilitation Plan is deemed to have been approved by a class of creditors if members of the said class holding more than fifty percent (50%) of the total claims of the said class vote in favor of the Plan. The votes of the creditors shall be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver pursuant to Section 44 of this Rule.

The rehabilitation receiver shall notify the court, the creditors or creditors' committee and the stakeholders of the approval or rejection of the Rehabilitation Plan within five (5) days from the date of such voting.

Notwithstanding the rejection of the Rehabilitation Plan, the court may, *motu proprio* or upon motion of any interested party within ten (10) days from notice of the rejection of the Rehabilitation Plan, confirm the Plan if all of the following circumstances are present:

- (A) the Rehabilitation Plan complies with the requirements specified in the Act and these Rules;
- (B) the rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;
- (C) the shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
- (D) the Rehabilitation Plan would likely provide the objecting class of creditors with compensation, which has a net present value greater than that which they would have received if the debtor were under liquidation.

SEC. 63. SUBMISSION OF REHABILITATION PLAN TO THE COURT. – If the Rehabilitation Plan is approved, the rehabilitation receiver shall submit the Plan to the court for confirmation. Within five (5) days from receipt of the Rehabilitation Plan, the court shall notify the creditors that the Rehabilitation Plan has been submitted for confirmation; that any creditor may obtain copies of the Rehabilitation Plan; and that any creditor may file an objection thereto.

SEC. 64. FILING OF OBJECTIONS TO REHABILITATION PLAN. - A creditor may file a verified opposition containing its written objections to the Rehabilitation Plan accompanied by affidavits and supporting documents within twenty (20) days from receipt of notice from the court that the Rehabilitation Plan has been submitted for confirmation.

Objections to a Rehabilitation Plan shall be limited to the following:

- (A) the creditors' support was induced by fraud;
- (B) the documents or data relied upon in the Rehabilitation Plan are materially false or misleading; or
- (C) the Rehabilitation Plan is in fact not supported by the voting creditors.

SEC. 65. HEARING ON THE OBJECTIONS. - If objections have been submitted during the relevant period and the court finds them sufficient in form and substance, it shall issue an order setting the date and time for the hearing or hearings on the objections, which shall not be later than ten (10) days from the expiration of the period to file objections.

After hearing, if the court finds merit in the objection, it shall order the rehabilitation receiver or other party to cure the defect, whenever feasible. If the court determines that the debtor acted in bad faith, or that it is not feasible to cure the defect, the court shall convert the proceedings into one for the liquidation of the debtor.

SEC. 66. CONFIRMATION OF THE REHABILITATION PLAN. - The court shall issue an order confirming the Rehabilitation Plan in any of the following instances:

- (A) no objections are filed within the twenty (20)-day period from receipt of notice from the court that a Rehabilitation Plan has been submitted to court;
- (B) the court finds the objections lacking in merit;
- (C) the basis for the objection has been cured; or
- (D) the debtor has complied with the order to cure the objection.

The court may confirm the Rehabilitation Plan notwithstanding unresolved disputes over claims if the Rehabilitation Plan has made adequate provisions for paying such claims.

Notwithstanding the first paragraph of this Section, if the court finds that there is no substantial likelihood that the debtor can be rehabilitated, it shall not confirm the Rehabilitation Plan and, instead, declare a failure of rehabilitation in accordance with Section 73 of this Rule.

The provisions of other laws to the contrary notwithstanding, the court shall have the power to approve or implement the Rehabilitation Plan despite the lack of approval, or objection from the owners, partners or stockholders of the insolvent debtor: provided, that the terms thereof are necessary to restore the financial well-being and viability of the insolvent debtor.

The order confirming the Rehabilitation Plan shall specify the portions approved by the court and the portions rejected during consideration or cured by the rehabilitation receiver.

SEC. 67. EFFECTS OF CONFIRMATION OF REHABILITATION PLAN. – The confirmation of the Rehabilitation Plan by the court shall result in the following:

- (A) the Plan and its provisions shall bind the debtor and all persons who may be affected thereby, including the creditors, whether or not such persons have participated in the proceedings or opposed the Plan or whether or not their claims have been scheduled;
- (B) the debtor shall comply with the provisions of the Plan and shall take all actions necessary to carry them out;
- (C) payments shall be made to the creditors in accordance with the provisions of the Plan;
- (D) contracts and other arrangements between the debtor and its creditors shall remain valid and continue to apply to the extent that they do not conflict with the provisions of the Plan;
- (E) any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on the creditors regardless of whether or not the Plan is successfully implemented; and
- (F) claims arising after the approval of the Plan that are otherwise not treated by the Plan are not subject to any Suspension Order.

The Order confirming 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 and allegations that the debtor has breached the Plan.

SEC. 68. LIABILITY OF GENERAL PARTNERS OF A PARTNERSHIP OR FOR UNPAID BALANCES UNDER AN APPROVED PLAN. - The approval of the Rehabilitation Plan shall not affect the rights of creditors to pursue separate actions against general partners of a partnership to the extent they are liable under relevant legislation for the debts thereof.

SEC. 69. TREATMENT OF AMOUNTS OF INDEBTEDNESS OR OBLIGATIONS FORGIVEN OR REDUCED. - Amounts of any indebtedness or obligations reduced or forgiven in connection with a Plan's approval shall not be subject to any tax in furtherance of the purposes of the Act.

SEC. 70. PERIOD FOR CONFIRMATION OF THE REHABILITATION PLAN. - The court shall have a maximum period of one (1) year from the date of the filing of the petition to confirm a Rehabilitation Plan for the debtor.

If no Rehabilitation Plan is confirmed within this period, the proceedings may, upon motion by any interested party, the rehabilitation receiver, or *motu proprio*, be converted into one for the liquidation of the debtor.

SEC. 71. DISCHARGE OF REHABILITATION RECEIVER. – Upon the confirmation of the Rehabilitation Plan, the rehabilitation receiver shall submit a report and accounting to the court within thirty (30) days from such confirmation for the approval of the court.

Upon approval of the report and accounting, the court shall order the rehabilitation receiver's discharge unless the Rehabilitation Plan specifically describes the role of the rehabilitation receiver and/or requires the rehabilitation receiver to assume certain duties and responsibilities even after the confirmation of the Rehabilitation Plan. In such case, the court shall order his discharge after the termination of the rehabilitation proceedings and the approval of his final report and accounting.

SEC. 72. AMENDMENTS TO THE APPROVED REHABILITATION PLAN. – After the confirmation of the Rehabilitation Plan, the debtor, rehabilitation receiver or any creditor may file a verified motion for leave to amend the Plan. The motion shall state the reasons warranting the amendment of the Rehabilitation Plan and the proposed amendments, with a copy given to the rehabilitation receiver.

Within five days from filing of the motion, the court *motu proprio* shall grant or deny the motion. If the court grants the motion, it shall set the proposed amendments for hearing not later than fifteen (15) days from date of the order. The order, which shall include the proposed amendments, shall be published once in a newspaper of general circulation in the Philippines not later than five (5) days from date of the order.

The proposed amendments shall be subject to the same requirements set forth in Section 63 of this Rule.

The court shall act on the proposed amendments not later than forty-five (45) days from the date of the filing of the motion for leave to amend the Rehabilitation Plan.

(I) TERMINATION OF PROCEEDINGS

SEC. 73. TERMINATION OF PROCEEDINGS. – At any time from the filing of the petition, any interested party or the rehabilitation receiver may file a motion for the termination of the proceedings. After hearing the motion, the court may order the proceedings terminated by either declaring a successful implementation of the Rehabilitation Plan or a failure of rehabilitation.

There is failure of rehabilitation in the following cases:

- (A) Dismissal of the petition by the court;
- (B) Failure to submit a Rehabilitation Plan;
- (C) A Rehabilitation Plan is not confirmed by the court;

- (D) Under the Rehabilitation Plan submitted by the debtor, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period based on the requirements of Section 21 of the Act;
- (E) The Rehabilitation Plan or its amendment is approved by the court but in the implementation thereof, the debtor fails to perform its obligations thereunder or there is a failure to realize the objectives, targets or goals set forth therein, including the timelines and conditions for the settlement of the obligations due to the creditors and other claimants;
- (F) Determination that the Rehabilitation Plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions;
- (G) There is a finding that fraud was committed in securing the approval of the Rehabilitation Plan or its amendment;
- (H) In cases falling under Section 65 of this Rule, where, after finding merit in the objection/s raised against the confirmation of the Rehabilitation Plan, the defect is not cured within such time as the court may order, or if the court determines that the debtor acted in bad faith, or that it is not feasible to cure the defect; and
- (I) Failure of the debtor to comply with these Rules, the Rules of Court, or any order of the court.

Upon a breach of, or failure of the Rehabilitation Plan, the court, upon motion by an affected party, and after hearing, may

- (1) issue an order directing that the breach be cured within a specified period of time, failing which the proceedings may be converted to liquidation proceedings;
- (2) issue an order converting the proceedings to liquidation proceedings;
- (3) allow the debtor or rehabilitation receiver to submit amendments whose approval shall be governed by the same requirements for creditor approval and court confirmation of a Rehabilitation Plan under this Rule;
- (4) issue any other order to remedy the breach consistent with the Act and these Rules, other applicable law and the best interests of the creditors; or
- (5) enforce the applicable provisions of the Rehabilitation Plan through a writ of execution.

SEC. 74. EFFECTS OF TERMINATION. – Termination of the proceedings shall result in the following:

- (A) the discharge of the rehabilitation receiver subject to his submission of a final accounting; and
- (B) the lifting of the Stay Order and any other court order holding in abeyance any action for the enforcement of a claim against the debtor.

If the termination of proceedings is due to failure of rehabilitation or dismissal of the petition for reasons other than technical grounds, the proceedings shall be immediately converted to liquidation as provided in Section 92 of the Act.

RULE 3 PRE-NEGOTIATED REHABILITATION

SEC. 1. PRE-NEGOTIATED REHABILITATION PLAN. - An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a Pre-Negotiated Rehabilitation Plan.

The petition shall comply with Section 2(A), Rule 2 of these Rules, where applicable, and be supported by an affidavit showing the written approval or endorsement of creditors holding at least two-thirds (2/3) of the total liabilities of the debtor, including secured creditors holding more than fifty percent (50%) of the total secured claims of the debtor and unsecured creditors holding more than fifty percent (50%) of the total unsecured claims of the debtor. Further, the petition shall also include as a minimum the following:

- (A) a Schedule of Debts and Liabilities which lists all the creditors of the debtor, indicating the name and last address of record of each creditor; the amount of each claim as to principal, interest, or penalties due thirty (30) days prior to the date of filing; the nature of the claim; and any pledge, lien, mortgage, judgment or other security given for the payment thereof;
- (B) an Inventory of Assets which must list with reasonable particularity all the assets of the debtor, whether in the possession of the debtor or third parties, stating the nature of each asset, its location and condition, its book value and market value, and attaching the corresponding certified copy of the certificate of title thereof in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any; and the identities and addresses of the lien holders and claimants. The Inventory shall include
 - (1)a Schedule of Accounts Receivable which must indicate the amount of each account, the persons from whom due and their correct addresses, the dates of maturity, and the potential for collectability categorizing them as highly collectible to remotely collectible; and
 - (2)a Schedule of Existing Claims against third parties which must indicate the name and last address of record of each third party against whom the debtor has a claim; the nature and amount of the claim, including the principal, interest, or penalties due from each third party and any pledge, lien, mortgage, judgment or other security or collateral given for the payment of each claim; and a brief statement of the facts which gave rise to the claim;

- (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) an Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" of these Rules; and
- (E) the Pre-Negotiated Rehabilitation Plan, including the names of at least three (3) qualified nominees for rehabilitation receiver;

All attachments to the petition shall be deemed part and parcel of the verified petition.

SEC. 2. ISSUANCE OF ORDER. - Within five (5) working days from the date of filing the petition, if the court determines that the petition is sufficient in form and substance, it shall issue an Order which shall:

- (A) identify the debtor, its principal business or activity/ies and its principal place of business;
- (B) declare that the debtor is under rehabilitation;
- (C) summarize the ground/s for the filing of the petition;
- (D) direct the publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of its issuance;
- (E) direct the service by personal delivery of a copy of the petition on each creditor who is not a petitioner holding at least ten percent (10%) of the total liabilities of the debtor, as determined in the schedule attached to the petition, within three (3) days from the issuance of the Order;
- (F) state that copies of the petition and the Pre-Negotiated Rehabilitation Plan are available for examination and copying by any interested party;
- (G) state that if no verified objection to the petition or the Pre-Negotiated Rehabilitation Plan is submitted with the court within eight (8) days from the date of the second publication of the Order required under Subsection (D) above, the court shall approve the Pre-Negotiated Rehabilitation Plan within ten (10) days from the date of the second publication of the Order, pursuant to Section 4 of this Rule;
- (H) state that creditors and other interested parties may submit their comments on the petition or the Pre-Negotiated Rehabilitation Plan within a period of not later than twenty (20) days from the second publication of the Order, under Section 6 of this Rule;
- (I) appoint a rehabilitation receiver, if not provided for in the Pre-Negotiated Rehabilitation Plan; and
- (J) impose a Suspension or Stay Order as described in these Rules.

SEC. 3. EFFECTIVITY AND DURATION OF ORDER. – The Order shall have the same effects as a Commencement Order under Section 9, Rule 2 of these Rules.

It shall retroact to the date of the filing of the petition and shall be effective for one hundred twenty (120) days from the filing of the petition unless earlier lifted by the court on account of (a) the approval of the Pre-Negotiated Rehabilitation Plan, or (b) the termination of the rehabilitation proceedings.

SEC. 4. APPROVAL OF PLAN. – If no verified objection to the petition or the Rehabilitation Plan is filed within eight (8) days from the date of the second publication of the Order provided in the preceding section, the court shall approve the rehabilitation plan within ten (10) days from the date of the second publication of such order.

The approved rehabilitation plan shall not be implemented until after the lapse of twenty (20) days from the date of the second publication of the Order, unless the court conducts a hearing pursuant to Section 7 of this Rule to consider the comments filed within twenty (20) days from the date of the second publication of the Order.

SEC. 5. OBJECTION TO THE PETITION OR REHABILITATION PLAN. - Any creditor or other interested party can only object on the following limited grounds:

- (A) the allegations in the petition or the Pre-Negotiated Rehabilitation Plan, or the attachments thereto, are materially false or misleading;
- (B) the majority of any class of creditors do not in fact support the Pre-Negotiated Rehabilitation Plan;
- (C) the support of the creditors or any of them was induced by fraud; or
- (D) the Pre-Negotiated Rehabilitation Plan fails to accurately account for a claim against the debtor and the claim is not categorically declared as a contested claim.

The objection must be submitted to and received by the court not later than eight (8) days from the date of the second publication of the Commencement Order. Copies of any objection to the petition or the Pre-Negotiated Rehabilitation Plan shall be served on the debtor, the rehabilitation receiver (if applicable), the secured creditor with the largest claim and who supports the Pre-Negotiated Rehabilitation Plan, and the unsecured creditor with the largest claim and who supports the Pre-Negotiated Rehabilitation Plan.

SEC. 6. COMMENTS. – Any creditor or other interested party may submit his comments on the petition or the Pre-Negotiated Rehabilitation Plan based on grounds other than those enumerated in Section 5 of this Rule.

SEC. 7. HEARING ON THE OBJECTIONS AND COMMENTS. - After receipt of objections under Section 5 and comments under Section 6, both of this Rule, the court shall set the case for hearing not earlier than twenty (20) days nor later than thirty (30) days from the date of the second publication of the Order issued

pursuant to Section 2 of this Rule. If the court finds the objection meritorious, it shall direct the debtor, when feasible, to cure the defect within fifteen (15) days from receipt of the order.

If the court determines that the debtor or creditors supporting the Pre-Negotiated Rehabilitation Plan acted in bad faith, or that the objection is non-curable, the court may convert the rehabilitation proceedings into liquidation.

A finding by the court that the objection has no substantial merit or that the same has been cured shall be deemed an approval of the Pre-Negotiated Rehabilitation Plan.

SEC. 8. PERIOD FOR APPROVAL OF REHABILITATION PLAN. - The court shall have a maximum period of one hundred twenty (120) days from the filing of the petition to approve or disapprove the Pre-Negotiated Rehabilitation Plan filed under this Rule.

If the court fails to so act within the said period, the Pre-Negotiated Rehabilitation Plan shall be deemed approved. In such a case, the court shall certify that no action has been made within the one hundred twenty (120)-day period and the Pre-Negotiated Plan is deemed approved pursuant to Section 81 of the Act.

SEC. 9. EFFECTS OF APPROVAL OF REHABILITATION PLAN. - Approval of the Pre-Negotiated Rehabilitation Plan under this Rule shall have the same legal effect as confirmation of a rehabilitation plan under Section 66, Rule 2 of these Rules.

<p>RULE 4 OUT-OF-COURT OR INFORMAL RESTRUCTURING AGREEMENT OR REHABILITATION PLAN</p>
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SEC. 1. OUT-OF-COURT OR INFORMAL RESTRUCTURING AGREEMENTS OR REHABILITATION PLAN. - An out-of-court or informal restructuring/workout agreement or rehabilitation plan (OCRA) under the Act shall comply with both requirements:

- (A) Approval by the
- (1) debtor;
 - (2) creditors representing at least sixty-seven percent (67%) of the secured obligations of the debtor;
 - (3) creditors representing at least seventy-five percent (75%) of the unsecured obligations of the debtor; and,
 - (4) creditors holding at least eighty-five percent (85%) of the total liabilities, secured and unsecured, of the debtor; and,

- (B) Publication of the notice of the OCRA once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the Philippines, as prescribed in Section 4 of this Rule.

SEC. 2. STANDSTILL PERIOD. – A standstill period may be agreed upon by the parties and shall be effective and enforceable not only against the contracting parties but also against the other creditors provided it complies with the following conditions:

- (A) approval of the agreement for a standstill period by creditors representing more than fifty percent (50%) of the total liabilities of the debtor;
- (B) publication of the notice of the agreement in a newspaper of general circulation in the Philippines, once a week for two (2) consecutive weeks; and
- (C) the standstill period shall not exceed one hundred twenty (120) days from the date of effectivity.

The notice of the standstill agreement shall substantially state the following minimum requirements:

- (1) the identity of the debtor, its principal business or activity/ies, and its principal place of business;
- (2) the total amount of the liabilities of the debtor, classified into secured and unsecured;
- (3) that a contact person is identified, together with his contact details, which should include existing office address, phone numbers, and e-mail addresses;
- (4) that creditors are invited to participate in the negotiations for an OCRA and may do so by contacting the person specified in the notice;
- (5) that the creditors representing more than fifty percent (50%) of the total liabilities of the debtor have agreed to observe a standstill period which shall not exceed one hundred twenty (120) days from its date of effectivity;
- (6) that the terms and conditions agreed upon by the parties shall be strictly observed during the standstill period;
- (7) that the standstill period shall be effective after publication of the notice once a week for two (2) consecutive weeks in a newspaper of general circulation in the Philippines; and
- (8) that the OCRA shall be binding on the debtor and all affected persons, including the creditors, whether or not they will participate in the negotiations, if approved by all of the following:
 - (a) the debtor;
 - (b) the creditors representing at least sixty-seven percent (67%) of the secured obligations of the debtor;
 - (c) the creditors representing at least seventy-five percent (75%) of the unsecured obligations of the debtor; and
 - (d) the creditors holding at least eighty-five percent (85%) of the total liabilities, secured and unsecured, of the debtor.

SEC. 3. EXPIRATION OF THE STANDSTILL PERIOD. – The standstill period shall expire upon (1) the lapse of 120 days from the effectivity of the standstill agreement, (2) the effectivity of the OCRA, or (3) the termination of the negotiations for the OCRA as declared by creditors representing more than fifty percent (50%) of the total liabilities of the debtor, whichever comes first.

SEC. 4. PUBLICATION OF THE OCRA. - The notice of the OCRA shall be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the Philippines.

The notice shall contain the following:

- (A) the salient provisions of the OCRA;
- (B) the OCRA is available for inspection or reproduction in the offices of the debtor at the expense of the requesting party;
- (C) the number of secured creditors who approved the OCRA, indicating how much they represent, in terms of percentage, among the secured obligations of the debtor, which should be at least sixty-seven percent (67%);
- (D) the number of unsecured creditors who approved the OCRA, indicating how much they represent, in terms of percentage, among the unsecured obligations of the debtor, which should be at least seventy-five percent (75%);
- (E) the total number of creditors, secured or unsecured, who approved the OCRA, indicating how much they represent, in terms of percentage, among the total liabilities of the debtor, which should be at least eighty-five percent (85%);
- (F) upon its effectivity, the OCRA and its provisions shall be binding upon the debtor and all affected persons, including the creditors, whether or not they participated in the proceedings or opposed the plan or whether or not their claims have been scheduled;
- (G) payments shall be made to the creditors in accordance with the provisions of the OCRA; and
- (H) the manner and other requirements for the amendment or modification of the OCRA.

The OCRA shall take effect upon the lapse of fifteen (15) days from the date of the last publication of its notice.

SEC. 5. CRAM DOWN EFFECT. - An OCRA that is approved pursuant to this Rule shall have the same legal effect as the confirmation of a rehabilitation plan under a court-supervised rehabilitation under Section 66, Rule 2 of these Rules.

SEC. 6. AMENDMENT OR MODIFICATION. – No amendment or modification of the OCRA shall be valid unless it (a) conforms to the manner and other requirements specified by the parties for the amendment or modification of the OCRA, and (b) complies with the requirements listed in Section 1 of this Rule.

The amended or modified OCRA shall take effect upon the lapse of fifteen (15) days from the date of the last publication of the required notice.

SEC. 7. EFFECT OF COURT ACTION OR OTHER PROCEEDINGS. - The Regional Trial Courts, as courts of general jurisdiction, shall have jurisdiction over the following:

- (A) a petition for court assistance to execute or implement the standstill agreement of the OCRA under Section 9 of this Rule; and
- (B) a petition for annulment of the standstill agreement or the OCRA under Section 11 of this Rule.

Any court action or other proceedings arising from, or relating to, the OCRA shall not stay its implementation, unless a temporary restraining order or preliminary prohibitory injunction is issued by the Court of Appeals in an original action under Rule 65 of the Rules of Court.

SEC. 8. VENUE. - The petition for court assistance to execute or implement, or for the annulment of either the standstill agreement or the OCRA may be filed with the Regional Trial Court having jurisdiction over the place in which the insolvent debtor resides or has its principal place of business.

SEC. 9. PETITION FOR COURT ASSISTANCE. - An application for court assistance to execute or implement a standstill agreement or an OCRA may be filed by the insolvent debtor and/or creditor, as the case may be, and shall be in the form of a petition which contains, as a minimum, the following:

- (A) the identity of the debtor, its principal business of activity/ies, and its principal place of business;
- (B) if the petition is filed by the creditor, the identity of the creditor and its principal place of business;
- (C) the identity and addresses of the party/ies against whom the assistance is sought;
- (D) a statement of the dates the standstill agreement or the OCRA was executed and became effective;
- (E) an allegation that the requisite creditor approval for a standstill agreement or for an OCRA has been obtained, in accordance with Section 2(A) or Section 1(A) of this Rule, respectively;
- (F) an allegation that the notice of the standstill agreement or the OCRA has been duly published in accordance with Section 2(B) or 1(C) of this Rule, respectively;
- (G) The salient provisions of the standstill agreement or the OCRA, including the provisions sought to be enforced; and
- (H) the specific form of assistance or relief sought.

A petition for court assistance shall be accompanied by a copy of the standstill agreement or the OCRA.

SEC. 10. FORMS OF ASSISTANCE. – The court may assist in the execution or implementation of the standstill agreement or the OCRA by issuing a writ of execution to enforce its terms.

Nothing in this Rule limits the power of the court to provide any other form of additional assistance as may be necessary to execute or implement the standstill agreement or the OCRA, including the award of damages properly pleaded and proved, and to protect the interests of the creditors, the debtor, and other interested parties.

SEC. 11. PETITION FOR ANNULMENT OF AN OCRA. – The debtor or creditor may file a petition to annul (1) the standstill agreement or (2) the OCRA based on the ground of non-compliance with the requirements for a standstill agreement under Section 2 of this Rule, or an OCRA under Section 1 of this Rule.

Vitiating of consent due to fraud, intimidation, or violence may be raised as a ground to annul the standstill agreement or the OCRA if committed against such number of creditors required for the approval of the standstill agreement or OCRA, as the case may be.

The petition shall allege, as a minimum, the following:

- (A) the identity of the debtor, its principal business or activity/ies, and its principal place of business; and
- (B) the ground for the petition.

The petition shall be accompanied by a copy of the standstill agreement or the OCRA and the amendments/modifications, if any, and shall be filed not later than thirty (30) days from the effectivity thereof.

SEC. 12. SERVICE OF SUMMONS. – Upon the filing of the petition, the court shall immediately issue and cause to be served the corresponding summons to the respondents within five (5) days from receipt of the petition.

The summons shall be accompanied with a copy of the petition, with all its attachments, and shall be served on all the person(s) indicated as respondents.

The summons shall direct the respondent to file a comment and/or opposition to the petition within a non-extendible period of five (5) days from receipt of the summons.

The summons, orders and other court processes may be served by the sheriff, his deputy or other proper court officer or, for justifiable reasons, by the counsel or representative of the petitioner, or any suitable person authorized or deputized by the court issuing the summons. Any private person who is authorized or deputized by the court to serve summons, orders and other court processes shall, for that purpose, be considered an officer of the court.

Service of summons to a respondent residing in the Philippines shall be made in person or by substituted service, in accordance with the Rules of Court.

Should either personal or substituted service fail, summons may be served by publication in a manner the court deems appropriate under the circumstances. In the case of juridical entities, summons by publication shall be done by indicating the names of its officers or its duly authorized representative.

Service of summons to a respondent not residing in the Philippines shall be effected out of the Philippines through any of the following means:

- (a) By personal service coursed through the appropriate court in the foreign country, with the assistance of the Department of Foreign Affairs;
- (b) By publication once in a newspaper of general circulation in the country where the respondent may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the respondent;
- (c) By facsimile or any recognized electronic means that could generate proof of service; or
- (d) By such other means as the court may in its discretion direct.

SEC. 13. COMMENT OR OPPOSITION. – The respondent shall file a verified comment or opposition to the petition, together with supporting affidavits and documents, within five (5) days from receipt of the summons and ensuring receipt thereof by the petitioner and the court not less than three (3) days before the date of the summary hearing under Section 15 of this Rule.

In an action for court assistance, a respondent may raise the defense that the standstill agreement or the OCRA is void for failure to comply with the requirements under Section 2 or Section 1 of this Rule, respectively. A respondent may raise the invalidity of the standstill agreement or the OCRA on the ground of vitiation of consent only if it affects such number of creditors required for the approval of the standstill agreement of the OCRA, as the case may be.

The failure to raise either defense shall constitute as waiver and preclude the respondent from filing a separate petition to annul the standstill agreement or the OCRA.

SEC. 14. COURT ORDER ON PETITION. – On the basis of the allegations of the petition and the comment or opposition, and their supporting documents, the court shall determine whether there is a genuine issue of material facts. In case the respondent fails to file a comment or opposition the petition, the court may conduct clarificatory hearings.

If the court determines that there is no genuine issue of material fact, the court shall rule whether the petition shall be granted. The court shall issue the order within five (5) days from receipt of the comment or opposition.

SEC. 15. SUMMARY HEARING. – If the court determines that there exists a genuine issue of material facts, it shall conduct a summary hearing not later than twenty (20) days from the filing of the petition.

The 120-day standstill period shall continue to run during the pendency of an action involving a standstill agreement. Upon the finality of the decision, the parties shall have the remaining balance of the period to enforce the decision, which in any case shall not be less than sixty (60) days.

The court shall render judgment which shall be not later than sixty (60) days from the filing of the petition.

SEC. 16. REVIEW OF DECISION OR ORDER IN OCRA. - The judgment in an action to implement or enforce a standstill agreement shall be final and immediately executory.

The judgment in any action involving the OCRA shall be final within ten (10) days from receipt of the decision and is immediately executory.

A judgment of the court under this Rule may be elevated to the Court of Appeals under Rule 65 of the Rules of Court.

A final judgment shall be without prejudice to the parties availing of the other modes of rehabilitation under Rule 2 or 3 of these Rules.

RULE 5 CROSS-BORDER INSOLVENCY PROCEEDINGS

SEC. 1. SCOPE OF APPLICATION. - This Rule applies where

- (A) assistance is sought in a Philippine court by a foreign court or a foreign representative in connection with a foreign proceeding;
- (B) assistance is sought in a foreign State in connection with a proceeding governed by the FRIA and these Rules; or
- (C) a foreign proceeding and a proceeding governed by the FRIA and these Rules are concurrently taking place; or
- (D) Creditors in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Rules 2, 3, and 4 of these Rules.

The sole fact that a petition is filed pursuant to this Rule does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the local courts for any purpose other than the petition for recognition and resulting related proceedings.

SEC. 2. AUTHORIZATION OF A REHABILITATION RECEIVER TO ACT IN A FOREIGN STATE.— A rehabilitation receiver is authorized to act in a foreign

State on behalf of a proceeding under these Rules, as permitted by the applicable foreign law.

SEC. 3. ACCESS OF FOREIGN CREDITORS TO A PROCEEDING UNDER THESE RULES. -

- (A) Subject to Sections 1 and 4 of this Rule, to paragraph 2 of this Section, and to the rule of reciprocity, foreign creditors have the same rights regarding proceedings commenced under Rules 2, 3 and 4 of these Rules as creditors in the Philippines.
- (B) Paragraph 1 above does not affect the ranking of claims in a proceeding under the relevant laws.

SEC. 4. RULES ON PUBLIC POLICY AND RECIPROCITY .— The court shall refuse to take any action in any proceeding contemplated under Section 1 of this Rule if

- (A) the action would be manifestly contrary to the public policy of the Philippines; and
- (B) the court finds that the country where the foreign rehabilitation proceeding is taking place does not extend recognition to a Philippine rehabilitation proceeding, or that the country of which the petitioner-foreign creditor is a national does not grant the same rights to a Philippine creditor in a manner substantially in accordance with these Rules.

SEC. 5. PETITION FOR RECOGNITION OF FOREIGN PROCEEDING.—

- (A) A foreign representative may apply with the Regional Trial Court which has jurisdiction over the place where the debtor resides or holds principal office for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (B) Whenever a petition for recognition of a foreign proceeding is filed after a proceeding under these Rules has been commenced, the petition for recognition of the foreign proceeding shall be filed with the same court.
- (C) A petition for recognition shall be accompanied by
 - (1) a certified copy of the order commencing the foreign proceeding and appointing the foreign representative; or
 - (2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (3) in the absence of evidence referred to in subparagraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment and identity of the foreign representative; and
 - (4) any additional evidence that the court may deem necessary, and allege how the petition is affected by the factors in granting relief specified under Section 13 of this Rule.

- (D) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
- (E) The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

SEC. 6. NOTICE OF FILING OF PETITION FOR RECOGNITION. – Within three (3) days from the filing of the petition for recognition of a foreign proceeding, the court shall acknowledge the fact of filing and issue a Notice of filing of the petition, which shall be published once in a newspaper of general circulation within five (5) days from its issuance. The Notice shall likewise state that any opposition to the petition should be filed within five (5) days from publication.

SEC. 7. PRESUMPTIONS CONCERNING RECOGNITION. - If the order or certificate referred to in paragraph (C), subparagraphs (1) or (2), of Section 5 of this Rule is attached to the petition for recognition, the court may disputably presume that

- (A) a foreign proceeding is a proceeding as defined under Section 5(g), Rule 1 of these Rules;
- (B) the foreign representative is a person or body as defined under Section 5(j), Rule 1 of these Rules and has established its identity;
- (C) the documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized; and
- (D) the debtor's registered office, or habitual residence in the case of an individual, is the centre of the debtor's main interests.

SEC. 8. RECOGNITION OF FOREIGN PROCEEDING. — Subject to Section 4 of this Rule, a foreign proceeding shall be recognized if

- (A) the proceeding is a foreign proceeding as defined under these Rules;
- (B) the person or body applying for recognition is a foreign representative as defined under these Rules; and
- (C) the petition meets the requirements of Section 6 of this Rule.

The foreign proceeding may be recognized either as a foreign main proceeding or a foreign non-main proceeding, as defined and understood under Section 5(h) and (i), Rule 1 of these Rules.

The court may modify or terminate the Order granting recognition, if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

SEC. 9. PERIOD TO RECOGNIZE FOREIGN PROCEEDING.— A petition for recognition of a foreign proceeding shall be decided within thirty (30) days from its filing.

SEC. 10. NOTIFICATION TO COURT. — From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

- (A) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and
- (B) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative,

and how the changes or developments affect or have affected the petition.

SEC. 11. PROVISIONAL RELIEF THAT MAY BE GRANTED UPON APPLICATION FOR RECOGNITION OF A FOREIGN PROCEEDING.— From the time of the complete publication of the notice of the fact of filing under Section 6 of this Rule until the same is decided upon, the court may, upon motion of the foreign representative where relief is urgently needed to protect the assets of the debtor or the interests of the creditors and there is *prima facie* showing that the petition is meritorious, grant relief of a provisional nature, including:

- (A) staying execution against the debtor's assets;
- (B) entrusting the administration or realization of all or part of the debtor's assets located in the Philippines to the foreign representative or another person designated by the court in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- (C) any relief mentioned in Section 13 (A) (3), (4) and (6) of this Rule.

Unless extended, the provisional relief granted under this section terminates when the application for recognition is decided upon.

The court may refuse to grant the provisional relief under this section if such relief would interfere with the administration of a foreign main proceeding.

SEC. 12. EFFECTS OF RECOGNITION OF FOREIGN PROCEEDING.—

- (A) Upon recognition of a foreign main proceeding:
 - (1) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed, provided that, such stay does not affect the right to commence actions or proceedings to preserve *ad cautelam* a claim against the debtor. For this purpose, the plaintiff may file the appropriate court action or proceeding against the debtor by paying the amount of One Hundred Thousand Pesos (₱100,000.00) or one-tenth (1/10) of the prescribed filing fee, whichever is lower. The payment of the balance of the filing fee shall be a jurisdictional requirement for the continuation of the proceedings in the *ad cautelam* claim;
 - (2) execution against the debtor's assets is stayed in accordance with Section 9, Rule 2 of these Rules; and

- (3) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended in accordance with Section 9, Rule 2 of these Rules.
- (B) Upon recognition of a foreign proceeding, the foreign representative is entitled to participate, through counsel, in any proceeding involving the debtor filed under these Rules.
- (C) The recognition of the foreign proceeding does not affect the right of Philippine creditors to commence or continue a rehabilitation or liquidation proceeding under these Rules or the right to file or continue claims in these proceedings.
- (D) The order granting recognition of the foreign proceeding shall be published in two separate newspapers of general circulation not later than five (5) days from its issuance.

SEC. 13. RELIEF THAT MAY BE GRANTED AFTER RECOGNITION OF FOREIGN PROCEEDING. —

- (A) Upon recognition of a foreign proceeding, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, upon motion of the foreign representative, grant any appropriate relief including:
- (1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under Section 12(A)(1) of this Rule;
 - (2) staying execution against the debtor's assets to the extent it has not been stayed under Section 12(A)(2) of this Rule;
 - (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent that this right has not been suspended under Section 12(A)(3) of this Rule;
 - (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (5) entrusting the administration or realization of all or part of the debtor's assets located in the Philippines to the foreign representative or another person designated by the court;
 - (6) granting any additional relief that may be available to the rehabilitation receiver under the law or these Rules.
- (B) Upon recognition of a foreign proceeding, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Philippines to the foreign representative or another person designated by the court: provided that the court is satisfied that the interests of local creditors are adequately protected.

SEC. 14. FACTORS IN GRANTING RELIEF. - In determining whether to grant relief under this Rule, the court shall consider

- (A) the protection of creditors in the Philippines and the inconvenience in pursuing their claim in a foreign proceeding;
- (B) the just treatment of all creditors through resort to a unified insolvency or rehabilitation proceedings;
- (C) whether other jurisdictions have given recognition to the foreign proceeding;
- (D) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with the manner prescribed in this Rule; and
- (E) the extent that the foreign proceeding has recognized and shown deference to proceedings under the Act and previous legislation.

SEC. 15. PROTECTION OF CREDITORS AND OTHER INTERESTED PERSONS.—

- (A) The court may impose conditions in the grant of relief under Sections 11 and 13 of this Rule, as it may deem appropriate.
- (B) The court may, *motu proprio* or upon motion of the foreign representative, or of a person affected by the relief granted under Sections 11 and 13 of this Rule, modify or terminate such relief.

SEC. 16. ACTIONS TO AVOID ACTS DETRIMENTAL TO CREDITORS. — Upon recognition of a foreign proceeding, the foreign representative, through counsel, acquires the standing to initiate actions to avoid or otherwise render ineffective acts detrimental to creditors that are available under these Rules.

SEC. 17. INTERVENTION BY FOREIGN REPRESENTATIVE IN PHILIPPINE PROCEEDINGS. — Upon recognition of a foreign proceeding, the foreign representative may intervene, through counsel, in any action or proceeding in the Philippines in which the debtor is a party.

SEC. 18. COOPERATION AND DIRECT COMMUNICATION WITH FOREIGN COURTS. —In matters covered by this Rule, the court shall cooperate to the maximum extent possible in all court-to-court communications for purposes of information or assistance.

SEC. 19. COOPERATION AND DIRECT COMMUNICATION BETWEEN THE REHABILITATION RECEIVER OR LIQUIDATOR AND FOREIGN COURTS OR FOREIGN REPRESENTATIVES.

- (A) In matters referred to in Section 1 of this Rule, a rehabilitation receiver or liquidator shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
- (B) The rehabilitation receiver or liquidator is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

SEC. 20. FORMS OF COOPERATION.—Cooperation may be implemented by any appropriate means, including but not limited to the following:

- (A) appointment of a person or body to act at the discretion of the court;
- (B) communication of information by any means considered appropriate by the court;
- (C) coordination of the administration and supervision of the debtor's assets and affairs;
- (D) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (E) coordination of concurrent proceedings regarding the same debtor;
- (F) suspension of proceedings against the debtor;
- (G) limiting the relief to assets that should be administered in a foreign proceeding pending in a jurisdiction other than the place where the debtor has its principal place of business (foreign non-main proceeding) or information required in that proceeding; and
- (H) implementation of rehabilitation or re-organization plan for the debtor.

Nothing in this Rule limits the power of the court to provide additional assistance to the foreign representative under other applicable laws.

SEC. 21. COMMENCEMENT OF LOCAL PROCEEDING AFTER RECOGNITION OF FOREIGN PROCEEDING. – After the recognition of a foreign proceeding, a local proceeding under these Rules may be commenced only if the debtor is doing business in the Philippines. The effects of the proceedings shall be restricted to the assets of the debtor located in the country and, to the extent necessary to implement cooperation and coordination under Sections 19 and 20 of this Rule, to the other assets of the debtor that, under local laws, must be administered in that proceeding.

SEC. 22. LOCAL AND FOREIGN PROCEEDINGS – Where a foreign proceeding and a local proceeding are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under Sections 19 and 20 of this Rule. Any relief granted to the foreign proceeding must be made consistent with the relief granted in the local proceeding.

RULE 6 PROCEDURAL REMEDIES

SEC. 1. MOTION FOR RECONSIDERATION. —A party may file a motion for reconsideration of any order issued by the court prior to the approval of the Rehabilitation Plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for *certiorari* under Rule 65 of the Rules of Court.

An order issued after the approval of the Rehabilitation Plan can be reviewed only through a special civil action for *certiorari* under Rule 65 of the Rules of Court.

SEC. 2. REVIEW OF DECISION OR ORDER ON REHABILITATION PLAN. — An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for *certiorari* to the Court of Appeals under Rule 65 of the Rules of Court within fifteen (15) days from notice of the decision or order.

RULE 7 MISCELLANEOUS AND FINAL PROVISIONS
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SEC. 1. APPLICABILITY OF PROVISIONS. — The provisions in Rules 2 (Court-Supervised Rehabilitation), insofar as they are applicable, shall likewise apply to proceedings in Rule 3 (Pre-Negotiated Rehabilitation) and Rule 4 (Out-of-Court or Informal Restructuring Agreements).

SEC. 2. EFFECTIVITY. — These Rules shall take effect fifteen (15) days after their complete publication in the Official Gazette or in at least two (2) newspapers of national circulation in the Philippines.

ANNEX "A"**AFFIDAVIT OF GENERAL FINANCIAL CONDITION**

- (1) Are you an officer of the debtor referred to in these proceedings?
- (2) What is your full name and what position do you hold in the debtor?
- (3) What is the full name of the debtor and what is the address of its head office?
- (4) When was it formed or incorporated?
- (5) When did the debtor commence business?
- (6) What is the nature of its business? What is the market share of the debtor in the industry in which it is engaged?
- (7) Who are the parties, members, or stockholders? How many employees?
- (8) What is the capital of the debtor?
- (9) What is the capital contribution and what is the amount of the capital, paid and unpaid, of each of the partners or shareholders?
- (10) Do any of these people hold the shares in trust for others?
- (11) Who are the directors and officers of the debtors?
- (12) Does the debtor have any subsidiary corporation? If so, give particulars?
- (13) Has the debtor properly maintained its books and are they updated?
- (14) Were the books audited annually?
- (15) If so, what is the name of the auditor and when was the last audited statement drawn up?
- (16) Were all the proper returns made to the various government agencies which required them?
- (17) When did the debtor first become aware of its problems?
- (18) Has the debtor, within the twelve months preceding the filing of the petition
 - (a) made any payments, returned any goods or delivered any property to any of its creditors, except in the normal course of business?
 - (b) executed any mortgage, pledge, or security over any of its properties in favor of any creditor?
 - (c) transferred or disposed of any of its properties in payment of any debt?
 - (d) sold, disposed of, or removed any of its property except in the ordinary course of business?
 - (e) sold any merchandise at less than fair market value or purchased merchandise or services at more than fair market value?
 - (f) made or been a party to any settlement of property in favor of any person? If yes, give particulars.
- (19) Has the debtor recorded all sales or dispositions of assets?

- (20) What were the sales for the last three years and what percentage of the sales represented the profit or mark-up?
- (21) What were the profits or losses for the debtor for the last three years?
- (22) What are the causes of the problems of the debtor? Please provide particulars?
- (23) When did you first notice these problems and what actions did the debtor take to rectify them?
- (24) How much, in your estimate, is needed to rehabilitate the debtor?
- (25) Has any person expressed interest in investing new money to the debtor?
- (26) Are there any pending and threatened legal actions against the debtor? If so, please provide particulars.
- (27) Has the debtor discussed any restructuring or repayment plan with any of the creditors? Please provide status and details.
- (28) Has any creditor expressed interest in restructuring the debts of the debtor? If so, please give particulars.
- (29) Have employees' wages and salaries been kept current? If not, how much are in arrears and what time period do the arrears represent?
- (30) Have obligation to the government and its agencies been kept current? If not, how much are in arrears and what time period do the arrears represent?