



Republic of the Philippines
Supreme Court
Manila

EN BANC

A.M. NO. 15-04-06-SC

FINANCIAL LIQUIDATION AND SUSPENSION OF PAYMENTS RULES OF
PROCEDURE FOR INSOLVENT DEBTORS (2015)

RESOLUTION

Whereas, under Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), the Supreme Court shall “promulgate the rules of pleading, practice and procedure to govern the proceedings brought under [the] Act¹;

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 Republic Act No. 10142 on the aspects of financial rehabilitation, insolvency and liquidation;

Whereas, the Supreme Court, through A.M. No. 12-12-11-SC dated August 27, 2013, approved the Financial Rehabilitation Rules of Procedure (2013), otherwise known as the *FR Rules*, which incorporated changes pertaining to financial rehabilitation;

NOW, THEREFORE, acting on the recommendation of the Sub-Committee on Special Commercial Courts, the Court resolved to **APPROVE** the **Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors (2015)**, otherwise known as the “FLSP Rules”.

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

April 21, 2015.

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



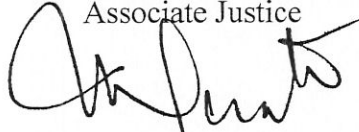
TERESITA J. LEONARDO-DE CASTRO

Associate Justice



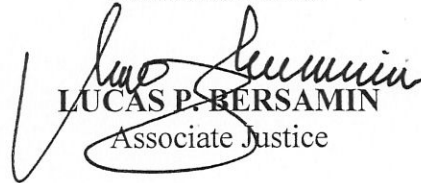
ARTURO D. BRION

Associate Justice



DIOSDADO M. PERALTA

Associate Justice



LUCAS P. BERSAMIN

Associate Justice



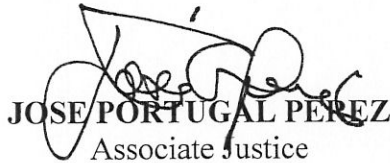
MARIANO C. DEL CASTILLO

Associate Justice



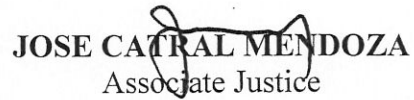
MARTIN S. VILLARAMA, JR.

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice



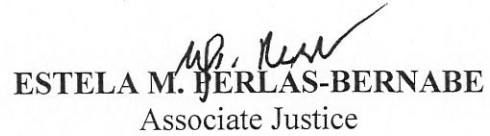
JOSE CATRAL MENDOZA

Associate Justice



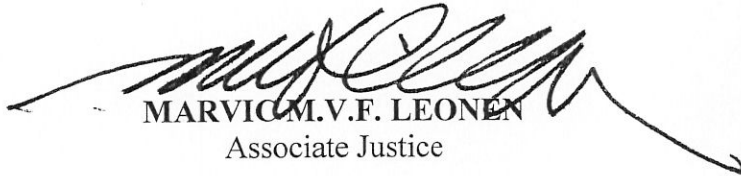
BIENVENIDO L. REYES

Associate Justice



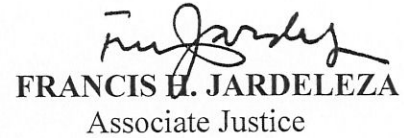
ESTELA M. BERLAS-BERNABE

Associate Justice



MARVIC M.V.F. LEONEN

Associate Justice



FRANCIS H. JARDELEZA

Associate Justice



Republic of the Philippines
Supreme Court
Manila

**FINANCIAL LIQUIDATION AND SUSPENSION OF PAYMENTS RULES OF
PROCEDURE FOR INSOLVENT DEBTORS (2015)**

Pursuant to Section 6, Chapter I of Republic Act No. 10142, otherwise known as the “Financial Rehabilitation and Insolvency Act (FRIA) of 2010,” the Court hereby adopts and promulgates the following Rules of Procedure for the Liquidation of Insolvent Juridical and Individual Debtors, and Suspension of Payments of Insolvent Individual Debtors:

RULE 1 COVERAGE AND GENERAL PROVISIONS

SEC. 1. TITLE. – These Rules shall be known and cited as the “Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors” or the “FLSP Rules.”

SEC. 2. SCOPE. – These Rules shall govern the practice, pleading, and procedure for the liquidation of insolvent juridical and individual debtors, and suspension of payments of insolvent individual debtors pursuant to the FRIA.

They shall similarly govern all further proceedings in insolvency 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.

These Rules shall have suppletory application to the liquidation of entities expressly excluded from the coverage of the FRIA under Section 5, Chapter I thereof.

SEC. 3. NATURE OF PROCEEDINGS. – The proceedings under these Rules shall be *in rem*.

In voluntary liquidation proceedings of both juridical and individual debtors, jurisdiction over all persons affected by the proceedings is acquired upon publication of the Liquidation Order as provided in these Rules.

In involuntary liquidation proceedings of juridical debtors, jurisdiction over all persons affected by the proceedings is acquired upon publication of the petition or motion under Section 7, Rule 2 (B) of these Rules.

In involuntary liquidation proceedings of individual debtors, jurisdiction over the person of the debtor is acquired upon service of summons in accordance with Section 15, Rule 3 (C) of these Rules; whereas jurisdiction over all other persons affected by the proceedings is acquired upon publication of the Liquidation Order under Section 2, Rule 4 (A) of these Rules.

In suspension of payments proceedings, jurisdiction over all persons affected by the proceedings is acquired upon publication of the Suspension of Payments Order as provided in these Rules.

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 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 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 court may order that the originals of the annexes to a submission be produced in court for examination or comparison by a party to the proceedings.

All pleadings or motions shall be filed simultaneously in three (3) printed and two (2) digitized copies in compact discs, flash drives, or other compatible Information and Communications Technology (ICT) media, in PDF format.

The court may decide matters on the basis of the pleadings and other documentary evidence, and conduct 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 5 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. 4. CONSTRUCTION OF RULES. – These Rules shall be liberally construed to promote a timely, fair, transparent, effective, and efficient liquidation and suspension of payments of debtors, in accordance with the declared policy of the FRIA.

SEC. 5. DEFINITION OF TERMS. – Terms used but not defined herein shall have the same meanings ascribed to them in the FRIA:

- (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 professional fees in preparing the petition;
 - 2) arising from, or in connection with the proceedings under these Rules;
 - 3) incurred in the ordinary course of business of the debtor after the commencement date;
 - 4) incurred for the fees of the liquidator/commissioner and/or of the professionals he may engage; and
 - 5) those otherwise authorized or mandated under the FRIA or such other expenses authorized under these Rules.
- (b) *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 receivables, subscriptions 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.
- (c) *Commencement date* shall refer to the date on which the court issues a commencement order in a rehabilitation case.
- (d) *Court/s* shall refer to the Regional Trial Court/s designated by the Supreme Court as special commercial court/s.
- (e) *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.
- (f) *Liquidation* shall refer to the proceedings under Chapters V, VI (B) and (C), and VII of the FRIA.

- (g) *Liquidation Order* shall refer to the order issued by the court pursuant to Section 2, Rule 4 (A) of these Rules.
- (h) *Liquidator* shall refer to the natural person or juridical entity appointed as such by the court pursuant to these Rules and entrusted with such powers and duties as set forth herein; Provided, that if the liquidator is a juridical entity, it must designate a natural person who possesses all the qualifications and none of the disqualifications as its representative, it being understood that the juridical entity and the representative are solidarily liable for all obligations and responsibilities of the liquidator.
- (i) *Proceedings*, unless the term is used in a different context, shall refer to liquidation proceedings or suspension of payments proceedings, as the case may be, under these Rules.
- (j) *Suspension of Payments Order* shall refer to the order issued by the court pursuant to Section 2, Rule 3 (A) of these Rules.
- (k) *Working day* shall have the same meaning as business day.

SEC. 6. DEBTOR SPOUSES AS PARTIES. – A married individual debtor shall sue or be sued jointly with his or her spouse, except as provided by law.

SEC. 7. APPLICABILITY OF RULE 5 OF THE FR RULES. – Rule 5 of the FR Rules on Cross-Border Insolvency Proceedings is hereby made applicable to liquidation proceedings and, for this purpose, is adopted as part of these Rules.

SEC. 8. LIABILITY OF INDIVIDUAL DEBTOR, OWNER OF A SOLE PROPRIETORSHIP, PARTNERS IN A PARTNERSHIP, OR DIRECTORS AND OFFICERS. – The individual debtor, 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 the proceedings are about to be commenced, or in contemplation thereof, willfully commit the following acts:

- (a) dispose or cause to be disposed 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.

RULE 2 LIQUIDATION OF INSOLVENT JURIDICAL DEBTORS

A. VOLUNTARY LIQUIDATION

SEC. 1. WHO MAY FILE PETITION; VENUE; CONTENTS. – An insolvent juridical debtor may file a verified petition for liquidation in the Regional Trial Court which has jurisdiction over its principal office as specified in its articles of incorporation or partnership. Where the principal office of the corporation or partnership as registered with the Securities and Exchange Commission (SEC) is in Metro Manila, the petition must be filed in the Regional Trial Court of the city or municipality where the head office is located. The petition shall indicate the names of at least three (3) nominees to the position of liquidator and shall include, as minimum attachments, the following:

- (a) a certificate attesting to the holding of a meeting of the Board of Directors of a stock corporation or the Board of Trustees of a non-stock corporation, as the case may be, called for the purpose and the approval during the meeting of a resolution to file the petition, signed by the secretary of the meeting and at least a majority of the members of the Board present during the meeting;
- (b) a certificate attesting to the holding of a meeting of the stockholders, members or partners comprising the debtor, as the case may be, called for the purpose and the approval during the meeting of a resolution to file the petition by the stockholders holding at least two-thirds (2/3) of the outstanding capital stock of the stock corporation, or two-thirds (2/3) of the members or partners in case of a non-stock corporation, association or partnership, as the case may be, signed by the chairman and the secretary of the meeting;
- (c) 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;
- (d) 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, 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;

- (e) a schedule of current income and expenditures within three (3) months prior to the filing of the petition;
- (f) a list of all properties acquired by the debtor in the immediately preceding two (2) years;
- (g) a list of all properties sold, disposed of, or donated by the debtor in the immediately preceding two (2) years;
- (h) a schedule of the debtor's executory contracts and unexpired leases;
- (i) the audited financial statements of the debtor for the immediately preceding three (3) years; and
- (j) the income tax return of the debtor for the immediately preceding year.

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

SEC. 2. FILING OF A MOTION TO CONVERT REHABILITATION PROCEEDINGS INTO LIQUIDATION PROCEEDINGS. – When there is a pending court-supervised or pre-negotiated rehabilitation proceeding, the debtor may file a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified and shall contain or set forth the same matters mentioned in the preceding section and the grounds relied upon as provided under the FRIA.

SEC 3. ACTION ON THE PETITION OR MOTION. – If the court finds the petition or motion, as the case may be, to be sufficient in form and substance, it shall issue the Liquidation Order mentioned in Section 2, Rule 4 (A) of these Rules. Otherwise, the court shall dismiss the petition or deny the motion. The court may take any action necessary for the foregoing purposes but it shall have a maximum period of ten (10) working days from the date of the filing of the petition or motion to issue the Liquidation Order, dismiss the petition, or deny the motion.

B. INVOLUNTARY LIQUIDATION

SEC. 4. WHO MAY FILE PETITION; VENUE; CONTENTS. – Three (3) or more creditors the aggregate of whose claims is at least either One Million Pesos (₱1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital stock or partners' contributions of the insolvent juridical debtor, whichever is higher, may file a petition for the liquidation of an insolvent juridical debtor in the Regional Trial Court which has jurisdiction over the principal office of the debtor as specified in its articles of incorporation or partnership. Where the principal office of the corporation or partnership as

registered with the SEC is in Metro Manila, the petition must be filed in the Regional Trial Court of the city or municipality where the head office is located. The petition must be verified by each of the petitioners or, if the petitioners or any of them is a corporation, partnership, or association, then by any of their duly authorized officer/s or representative/s. The petition shall indicate the names of at least three (3) nominees to the position of liquidator, and must show that:

- (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 one hundred eighty (180) days or that the debtor has failed generally to meet its liabilities as they fall due; and
- (b) there is no substantial likelihood that the debtor may be rehabilitated.

The petition shall also include information to the best knowledge of the petitioners on:

- (a) the schedule of debts and liabilities, including a list of its known creditors with their addresses, amounts of claims and collaterals, or securities, if any;
- (b) the debtor's assets, including receivables and claims against third parties; and
- (c) the audited financial statements of the debtor for the immediately preceding three (3) years.

SEC. 5. BOND. – The petitioners shall post a bond in an amount at least equal in value to the aggregate of their claims, conditioned upon payment to the debtor of all expenses and damages it may incur by reason of the filing of the petition if the same is later denied or dismissed by the court, or withdrawn by the petitioners without the consent of the debtor.

SEC. 6. FILING OF A MOTION TO CONVERT REHABILITATION PROCEEDINGS INTO LIQUIDATION PROCEEDINGS. – When there is a pending court-supervised or pre-negotiated rehabilitation proceedings, three (3) or more creditors the aggregate of whose claims is at least either One Million Pesos (₱1,000,000.00) or at least twenty-five percent (25%) of the subscribed capital, or partners' contributions, of the debtor, whichever is higher, may file a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified and shall contain or set forth the same matters mentioned in Section 4 of this Rule.

SEC. 7. ACTION ON THE PETITION OR MOTION. – If the court finds the petition or motion sufficient in form and substance, it shall issue an order:

- (a) directing the publication of the petition or motion in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks;
- (b) directing the debtor, all known creditors, and any other interested party, to file their comment on the petition or motion within fifteen (15) days from notice of the order; and

- (c) directing that a copy of the petition or motion be served on the debtor and on all known creditors, unless they exceed twenty (20) in number, in which case, service shall be made on at least the first twenty (20) largest known creditors of the debtor in terms of credits held. However, if there are more than twenty (20) known creditors (who are not petitioners) and one or more of them acquired their credit/s within the six (6)-month period immediately preceding the filing of the petition, the number of creditors to be served copies of the petition shall be increased by the same number.

SEC. 8. HEARING ON THE PETITION OR MOTION. – The court shall conduct a hearing if the petition or motion, as well as the comments thereto raise issues of facts.

On the basis of the pleadings and the hearing conducted, if any, the court shall determine whether the evidence is sufficient to warrant the issuance of a Liquidation Order mentioned in Section 2, Rule 4 (A) of these Rules. Otherwise, the court shall dismiss the petition or deny the motion.

SEC. 9. CONVERSION BY THE COURT OF REHABILITATION PROCEEDINGS INTO LIQUIDATION PROCEEDINGS. – After notice and hearing, the court where rehabilitation proceedings are pending may also order the conversion of rehabilitation proceedings into liquidation proceedings in those cases authorized by law, or at any other time upon the recommendation of the rehabilitation receiver or management committee that the rehabilitation of the debtor is no longer feasible. In such case, the FLSP Rules shall apply.

RULE 3 INSOLVENCY OF INDIVIDUAL DEBTORS

A. SUSPENSION OF PAYMENTS

SEC. 1. WHO MAY FILE PETITION; VENUE; CONTENTS. – An individual debtor who has assets that exceed his liabilities but foresees the impossibility of paying his debts when they respectively fall due may file a verified petition for suspension of payments in the court having jurisdiction over the province or city where he has resided for six (6) months prior to the filing of the petition.

The petition shall indicate the names of at least three (3) nominees to the position of commissioner and shall include, as minimum attachments, the following:

- (a) a schedule of debts and liabilities, including a list of creditors with their addresses, amount of claims and collaterals, if any;
- (b) an inventory of all the debtor's assets, including receivables and claims against third parties;

- (c) a schedule of current income and expenditures within three (3) months prior to the filing of the petition;
- (d) the income tax return of the debtor for the immediately preceding year;
- (e) a list of all properties acquired by the debtor in the immediately preceding two (2) years;
- (f) a list of all properties sold, disposed of, or donated by the debtor in the immediately preceding two (2) years;
- (g) a schedule of the debtor's executory contracts and unexpired leases; and
- (h) a proposed agreement with the creditors.

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

SEC. 2. ACTION ON THE PETITION. – If the Court finds the petition sufficient in form and substance, it shall, within five (5) working days from the filing of the petition, issue a Suspension of Payments Order:

- (a) prohibiting creditors from suing or instituting proceedings for collection against the debtor, except: (i) creditors having claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of the debtor incurred within sixty (60) days immediately prior to the filing of the petition; and (ii) secured creditors;
- (b) calling a meeting of all the creditors named in the schedule of debts and liabilities at a time not less than fifteen (15) days nor more than forty (40) days from the date of such order and designating the date, time, and place of the meeting;
- (c) directing such creditors to present written evidence of their claims before the scheduled creditors' meeting;
- (d) directing the publication of the said order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of the issuance of the order;
- (e) directing the clerk of court to send or cause the sending of a copy of the order by registered mail, postage prepaid, to all creditors named in the schedule of debts and liabilities;
- (f) prohibiting the petitioner from selling, transferring, encumbering or disposing his property, except those used in the ordinary operations of commerce or of industry in which the petitioner is engaged as long as the proceedings are pending;

- (g) prohibiting the petitioner from making any payment outside of the necessary or legitimate expenses of his business or industry, as long as the proceedings are pending; and
- (h) appointing a commissioner to preside over the creditors' meeting, who may or may not be from among the nominees of the debtor.

SEC. 3. MOTION TO SUSPEND PENDING EXECUTION. – Upon motion of the petitioner, the court may also issue an order suspending any pending execution against the debtor. Property held as security by secured creditors shall not be subject to such suspension order.

The order suspending execution shall lapse when three (3) months shall have passed without the proposed agreement being accepted by the creditors or as soon as such proposed agreement is rejected.

SEC. 4. PERSONS WHO MAY REFRAIN FROM ATTENDING AND VOTING DURING THE CREDITORS' MEETING. – Secured creditors and creditors having claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of the debtor incurred within sixty (60) days immediately prior to the filing of the petition may refrain from attending the creditors' meeting and from voting therein. Such persons shall not be bound by any agreement arrived at in such meeting, unless, being aware of this right, they attend the meeting, participate in the discussions and vote therein.

SEC. 5. WHO MAY BE APPOINTED COMMISSIONER. – The commissioner, who shall preside over the creditors' meeting in connection with the proceedings, shall be a natural person who shall have the following minimum qualifications:

- (a) a citizen of the Philippines or a resident thereof for six (6) months immediately preceding his appointment;
- (b) of good moral character and with acknowledged integrity, impartiality and independence;
- (c) has the requisite knowledge of insolvency laws, rules and procedures; and
- (d) has no conflict of interest; Provided, that such conflict of interest may be waived, expressly or impliedly, by a party who may be prejudiced thereby. 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.

The debtor or any creditor may file a written objection to the commissioner appointed by the court on the ground that he does not meet the foregoing minimum requirements. If the court finds merit in the objection, it shall appoint a new commissioner.

SEC. 6. CREDITORS' MEETING. – The presence of creditors, either in person or through a representative duly authorized in writing, holding claims amounting to at least three-fifths (3/5) of the liabilities of the petitioner, excluding liabilities unaffected by the Suspension of Payments Order listed as exceptions under Section 2 (a) of this Rule, shall be necessary to hold a creditors' meeting under this Rule. The court-appointed commissioner shall preside over the meeting and the clerk of court shall act as meeting secretary, subject to the following rules:

- (a) The clerk of court shall record the creditors present and the amount of their respective claims;
- (b) The commissioner shall examine the written evidence of the claims. If the creditors present hold at least three-fifths (3/5) of the liabilities of the debtor as above-qualified, he shall declare a quorum;
- (c) The creditors and the debtor shall discuss the proposed agreement and any amendment thereto, and put it to a vote. No creditor who incurred his credit within ninety (90) days prior to the filing of the petition shall be allowed to vote;
- (d) To form a majority, it is necessary:
 - 1) that two-thirds (2/3) of the creditors voting unite upon the matter on the table; and
 - 2) that the claims represented by said majority vote amount to at least three-fifths (3/5) of the total liabilities of the debtor as above-qualified; and
- (e) After the announcement of the results, all the protests against the majority vote shall be drawn up, and the commissioner, the debtor and all creditors who took part in the voting shall sign the affirmed propositions.

The commissioner shall prepare a report of the proceedings that shall include the voting results, the affirmed propositions mentioned in paragraph (e) above, if any, and submit the report to the court not later than three (3) days after the last creditors' meeting.

SEC. 7. REJECTION OF THE DEBTOR'S PROPOSAL AND DISMISSAL OF THE PETITION. – If no creditors' meeting with the required quorum is held within ninety (90) days from the date of the last publication mentioned in Section 2 (d) of this Rule, or, there being such meeting or meetings, the debtor's proposal is not approved within the said period, the same shall be deemed rejected. In such a case, the court, within five (5) days from the lapse of the ninety (90)-day period, or from receiving the report of the commissioner mentioned in the preceding section that the debtor's proposal has been rejected, shall issue an order dismissing the petition.

SEC. 8. OBJECTIONS TO THE APPROVAL OF THE DEBTOR'S PROPOSAL OR ANY AMENDMENT THERETO. – If the proposal of the debtor, or any amendment thereto, made during

the creditors' meeting, is approved by the majority of creditors in accordance with Section 6 of this Rule, any creditor who attended the meeting and who dissented from and protested against the vote of the majority may file an objection with the court within ten (10) days from the date of the meeting on any of the following grounds:

- (a) defects in the call for the meeting, in the holding thereof, and in the deliberations had thereat which prejudice the rights of the creditors;
- (b) fraudulent connivance between one or more creditors and the individual debtor to vote in favor of the proposed agreement, or any amendment thereto; or
- (c) fraudulent conveyance of claims for the purpose of obtaining a majority.

The court shall hear and pass upon such objection in a summary manner, within thirty (30) days from the filing of the objection. If the decision of the majority of creditors to approve the debtor's proposal, or any amendment thereto, is annulled by the court, the petition shall be dismissed.

SEC. 9. EFFECTS OF THE APPROVAL OF THE DEBTOR'S PROPOSAL OR ANY AMENDMENT THERETO. – If the decision of the majority of the creditors to approve the proposed agreement, or any amendment thereto, made during the creditors' meeting is upheld by the court, or when no opposition or objection to said decision has been presented, the court shall issue an order confirming the approval of the proposed agreement, or any amendment thereto, and directing all parties bound thereby to comply with its terms.

SEC. 10. RESIDUAL POWER OF THE COURT. – The court, upon motion of any affected party, may issue any order which may be necessary or proper to enforce the agreement. If the debtor fails, wholly or in part, to perform his obligations under the agreement, or to comply with any order of the court, the court, upon motion of any creditor, shall declare the agreement terminated, and all the rights which the creditors had against the debtor before the agreement shall revert in them.

B. VOLUNTARY LIQUIDATION

SEC. 11. WHO MAY FILE PETITION; VENUE; CONTENTS. – An individual debtor whose liabilities exceed his assets and whose debts exceed Five Hundred Thousand Pesos (P500,000.00) may file a verified petition for liquidation in the court having jurisdiction over the province or city where he has resided for six (6) months prior to the filing of the petition.

The petition shall indicate the names of at least three (3) nominees to the position of liquidator and shall include, as minimum attachments, the following:

- (a) a schedule of debts and liabilities, including a list of creditors with their addresses, amount of claims and collaterals, if any;
- (b) an inventory of all the debtor's assets, including receivables and claims against third parties;
- (c) a schedule of current income and expenditures within three (3) months prior to the filing of the petition;
- (d) the income tax return of the debtor for the immediately preceding year;
- (e) a list of all properties acquired by the debtor in the immediately preceding two (2) years;
- (f) a list of all properties sold, disposed of, or donated by the debtor in the immediately preceding two (2) years; and
- (g) a schedule of the debtor's executory contracts and unexpired leases.

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

SEC 3. ACTION ON THE PETITION. – If the court finds the petition sufficient in form and substance, it shall issue the Liquidation Order mentioned in Section 2, Rule 4 (A) of these Rules. Otherwise, the court shall dismiss the petition. The court may take any action necessary for the foregoing purposes but it shall have a maximum period of ten (10) working days from the date of the filing of the petition to issue the Liquidation Order or dismiss the petition.

C. INVOLUNTARY LIQUIDATION

SEC. 13. WHO MAY FILE PETITION; VENUE; CONTENTS. – Any creditor or creditors with a claim of, or the aggregate of whose claims is, at least Five Hundred Thousand Pesos (P500,000.00) may file a verified petition for liquidation of an individual debtor with the court of the province or city where the debtor resides.

The petition shall state the particulars of at least one of the following acts of insolvency of the debtor:

- (a) that the debtor is about to depart or has departed from the Philippines, with intent to defraud his creditors;
- (b) that being absent from the Philippines, with intent to defraud his creditors, he remains absent;

- (c) that the debtor conceals himself to avoid the service of legal process for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (d) that the debtor conceals, or is removing, any of his property to avoid its being attached or taken on legal process;
- (e) that the debtor has allowed his property to remain under attachment or legal process for three (3) days for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (f) that the debtor has confessed or offered to allow judgment in favor of any creditor for the purpose of hindering or delaying the liquidation or of defrauding any creditor;
- (g) that the debtor has wilfully allowed judgment to be taken against him by default for the purpose of hindering or delaying the liquidation or of defrauding his creditors;
- (h) that the debtor has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder or delay the liquidation or defraud any one of his creditors;
- (i) that the debtor has made any assignment, gift, sale, conveyance or transfer of his estate, property, rights or credits with intent to hinder or delay the liquidation or defraud his creditors;
- (j) that the debtor has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights or credits;
- (k) that being a merchant or tradesman, the debtor has generally defaulted in the payment of his current obligations for a period of thirty (30) days;
- (l) that for a period of thirty (30) days, the debtor has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; or
- (m) that an execution having been issued against him on final judgment for money, the debtor shall have been found to be without sufficient property subject to execution to satisfy the judgment.

SEC. 14. BOND FOR FILING OF PETITION. – The petitioner/s shall post a bond in an amount at least equal in value to the aggregate of his/their claims, conditioned upon payment to the debtor of all expenses and damages the debtor may incur by reason of the filing of the petition if the petition is later dismissed or withdrawn by the petitioner/s without the consent of the debtor, or if it is finally determined that the debtor is not insolvent.

SEC. 15. ORDER FOR DEBTOR TO SHOW CAUSE. – If the petition is sufficient in form and substance, the court, within five working (5) days from the filing of the petition, shall issue summons to the debtor requiring him, by way of comment on or opposition to the petition within an inextendible period of fifteen (15) days from service of the summons, to show cause why he should not be declared insolvent.

SEC. 16. ORDER FOR DEBTOR TO REFRAIN FROM PAYING DEBTS OR TRANSFERRING PROPERTY. – Upon motion of any creditor and after hearing, the court may, upon good cause shown, issue an order prohibiting the debtor from paying any of his debts, or from transferring any property belonging to him, until the court issues a Liquidation Order or dismisses the petition, whichever is earlier. However, nothing contained herein shall affect or impair the rights of a secured creditor to enforce his lien in accordance with its terms.

SEC. 17. HEARING ON THE PETITION. – After the issues are joined, the court shall set the petition for hearing in order to determine whether the evidence is sufficient to warrant the issuance of a Liquidation Order.

SEC. 18. ISSUANCE OF THE LIQUIDATION ORDER. – If the debtor on whom summons is properly served fails to file a comment on or opposition to the petition within the period given by the court, or if the evidence given during the hearing mentioned in the preceding section warrant it, the court shall issue the Liquidation Order mentioned in Section 2, Rule 4 (A) of these Rules.

SEC. 19. ABSENT DEBTOR. – When the debtor resides out of the Philippines, or when his residence is unknown, or he has departed from the Philippines with intent to defraud his creditors, or cannot, after due diligence, be found therein, or conceals himself to avoid service of summons, or any other related preliminary process or orders, then the court, upon motion of the petitioning creditors duly supported by an affidavit or affidavit/s narrating and substantiating any of the foregoing allegations and a bond approved by the court in double the amount of the aggregate sum of their claims against the debtor, shall issue an order directing:

- (a) the sheriff of the province or city in which the matter is pending to take into custody, within thirty (30) days from the date of the order, a sufficient amount of property of the debtor, not exempt from execution and not subject of a secured creditor's lien, to satisfy the claims of the petitioning creditors and the costs of the proceedings;
- (b) the publication of the summons and the said order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks;
- (c) the mailing of the petition, the summons and the order to the debtor's last known address;
- (d) the sending of an electronic mail to the debtor's last known electronic mail address, if any, attaching thereto copies of the petition, the summons and the order; and

- (e) the posting of copies of the petition and the summons on at least three (3) conspicuous places on any real property owned by the debtor.

If the debtor fails to file a comment, opposition or other responsive pleading to the petition or order within fifteen (15) days after the last publication of the summons and order, or within any other period given by the court, then the court shall issue a Liquidation Order mentioned in Section 2, Rule 4 (A) of these Rules.

SEC. 20. DUTY OF SHERIFF. – Upon receiving the order for him to take into custody property of the debtor, the sheriff shall take custody of such property of the debtor not exempt from execution and not subject of any secured creditor's lien sufficient to cover the amount provided for. He shall make a return to the court within two (2) days every time he takes property of the debtor pursuant to the order, and as soon as he has taken sufficient amount of the debtor's property to cover the amount provided for in the order, he shall make a return to the court of an inventory of all the property taken within three (3) days from the time of the last taking. Upon motion and for good cause shown, the time for making an inventory, or any return may be extended. The sheriff shall also prepare a schedule of the names and residences of the creditors, and the amount due each, from the books of the debtor, or from such other papers or data of the individual debtor available as may come to his possession, and shall file such schedule or list of creditors and inventory with the clerk of court.

SEC. 21. ALL PROPERTY TAKEN TO BE HELD FOR ALL CREDITORS; APPEAL BONDS; EXEMPTIONS TO SURETIES. – If after the taking mentioned in the preceding section, there still remains property of the debtor not exempt from execution and not subject of a secured creditor's lien, any other creditor or creditors, upon giving bond approved by the court in double the amount of his/their claim/s, singly or jointly, shall be entitled to similar orders and to like action, by the sheriff, until all claims are provided for, and as long as the debtor has sufficient property. All such property taken into custody by the sheriff shall be held by him for the benefit of all creditors whose claims shall be duly established in the proceedings.

SEC. 22. BONDS FOR CUSTODY OF PROPERTY AND APPEAL. – The bonds provided for in Sections 19 and 21 of this Rule to procure the order for custody of the property and effects of the debtor shall be conditioned upon payment to the debtor, his heirs, administrators, executors or assigns of all damages he may sustain by reason of the order for which the bonds were procured if, after hearing of the petition, the court shall find in favor of the debtor and the petition is dismissed. Such damages, which shall not exceed the amount of the bond, shall be determined and fixed by the court. If either the petitioners or the debtor shall appeal from the decision of the court, upon final hearing of the petition, the appellant shall be required to give bond to the successful party in a sum double the amount of the value of the property in controversy, and for the costs of the proceedings.

Any person interested in the estate may object to the sufficiency of the surety or sureties on such bond or bonds. The court shall direct the surety or sureties to justify their sufficiency. If the court

finds that the sureties or any of them are insufficient, the court shall issue an order dismissing the petition or vacating the order to take into the custody of the sheriff the property of the individual debtor, or denying the appeal, as the case may be.

SEC. 23. SALE OF DEBTOR'S PROPERTY UNDER SHERIFF'S CUSTODY. – If the property of the debtor taken into custody by the sheriff under Sections 19, 20 and 21 of this Rule is perishable, costly to maintain, subject to or in danger of rapid obsolescence, depreciation, or diminution in value, or when the interests of the debtor and the creditors will be better served by the sale thereof, the court, upon motion of any creditor, duly supported by affidavit/s narrating facts supporting the application and a bond equivalent to the estimated value of the property approved by the court, shall issue an order directing: (a) the sale of the property in the same manner as property is sold under execution, the proceeds to be deposited in the court to abide by the result of the proceedings; and (b) the publication of the order once a week for two consecutive weeks in a newspaper of general circulation in the city or province where the court exercises jurisdiction.

RULE 4

PROVISIONS COMMON TO LIQUIDATION IN INSOLVENCY OF INDIVIDUAL AND JURIDICAL DEBTORS

SEC. 1. USE OF TERM DEBTOR. – The term debtor used in this Rule shall refer to an individual debtor and/or a juridical debtor whenever appropriate.

A. THE LIQUIDATION ORDER

SEC. 2. LIQUIDATION ORDER. – The Liquidation Order shall:

- (a) declare the debtor insolvent;
- (b) order the liquidation of the debtor and, in the case of a juridical debtor, declare it as dissolved;
- (c) order the sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
- (d) order the publication of the Liquidation Order, together with the petition, or motion to convert the rehabilitation proceedings into liquidation proceedings, if any, in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks;
- (e) direct payments of any claims and conveyance of any property due the debtor to the liquidator;
- (f) prohibit payments and the transfer of any property by the debtor;

- (g) direct all creditors to file their claims with the liquidator not later than five (5) days from the time the liquidator takes his oath of office, furnishing a copy thereof to the court;
- (h) authorize the payment of administrative expenses as they become due;
- (i) state that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of liquidator; and
- (j) set the case for hearing for the election and appointment of the liquidator, which date shall not be less than thirty (30) days nor more than forty-five (45) days from the date of the last publication.

SEC. 3. EFFECTS OF THE LIQUIDATION ORDER. – Upon the issuance of the Liquidation Order:

- (a) the juridical debtor shall be deemed dissolved and its corporate or juridical existence terminated;
- (b) legal title to and control of all the assets of the debtor, except those that may be exempt from execution, shall be deemed vested in the liquidator or, pending his election or appointment, with the court;
- (c) all contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator, within ninety (90) days from the time he takes his oath of office, declares otherwise and the contract counter-party agrees;
- (d) no separate action for the collection of an unsecured claim shall be allowed. Actions already pending will be transferred to the liquidator for him to accept and settle or contest. If the liquidator contests or disputes the claim, the court shall allow, hear, and resolve such contest, except when the case is already on appeal. In such a case, the suit may proceed to judgment, and any final and executory judgment therein for a claim against the debtor shall be filed and allowed in court; and
- (e) no foreclosure proceeding shall be allowed for a period of one hundred eighty (180) days from the date of the order.

B. SECURED CREDITORS

SEC. 4. RIGHTS OF SECURED CREDITORS. – The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law, unless he waives his right.

SEC. 5. DUTY OF SECURED CREDITORS. – At any time prior to the election of the liquidator, a secured creditor shall manifest in writing to the court whether he is:

- (a) waiving his right under the security or lien in accordance with Section 6 of this Rule; or
- (b) maintaining his right under the security or lien.

If a secured creditor fails to file such a manifestation, he shall be deemed to have opted to maintain his right under the security or lien.

SEC. 6. WAIVER OF SECURITY OR LIEN. – A secured creditor shall not be deemed to have waived his right under the security or lien unless the waiver is made in a public document, in unequivocal language, and with full knowledge of the consequences of his action. If a secured creditor waives his right, he shall be entitled to participate in the liquidation proceedings as an unsecured creditor.

SEC. 7. WHEN A SECURED CREDITOR MAINTAINS HIS SECURITY OR LIEN. – If a secured creditor elects to enforce or maintain his right under the security or lien, at his option:

- (a) the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator, and approved by the court.

When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as an unsecured creditor for the balance. If the value of the property exceeds the claim secured, the liquidator may convey the property to the secured creditor and waive the debtor's right of redemption upon receiving the excess from the creditor. In any case, any other creditor or interested party may, upon a *prima facie* showing that the valuation is too low, contest the valuation and propose another mode by which to dispose of the property, or to otherwise convert it to cash or its equivalent, to ensure that the true maximum value of the property under the circumstances is obtained. A dissenting creditor or any other creditor or interested party may also offer to purchase the property at the price it is valued by the secured creditor and the liquidator, as approved by the court. At all times, it shall be the duty of the court to ensure that the property is valued at its maximum under the circumstances. In case there is conflict on the valuation of the property, the court may appoint an independent third party appraiser to assist in determining the proper valuation of the property;

- (b) the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale. The sale shall be made under such terms and conditions as the liquidator and the secured creditor may agree upon, as approved by the court, provided, that the costs of the sale, if any, shall be for the account of the secured creditor; or

- (c) the secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

C. THE LIQUIDATOR

SEC. 8. QUALIFICATIONS OF THE LIQUIDATOR. – The liquidator shall:

- (a) be a citizen of the Philippines or a resident thereof for six (6) months immediately preceding his nomination;
- (b) be of good moral character and with acknowledged integrity, impartiality and independence;
- (c) have the requisite knowledge of insolvency and other relevant commercial laws, rules and procedures, as well as the relevant training and/or experience that may be necessary to enable him to properly discharge the duties and obligations of a liquidator; and
- (d) have no conflict of interest: Provided, that such conflict of interest may be waived, expressly or impliedly, by a party who may be prejudiced thereby.

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. Without limiting the generality of the foregoing, an individual shall be deemed to have a conflict of interest if:

- (a) he is a creditor, owner, partner or stockholder of the debtor;
- (b) he is a creditor, owner, partner or stockholder of a creditor of the debtor;
- (c) he is engaged in a line of business which competes with that of the debtor;
- (d) he is, or was, within five (5) years from the filing of the petition or motion for conversion, a director, officer, owner, partner or employee of the debtor or any of the creditors, or acted as legal counsel or auditor or accountant of the debtor or any of the creditors;
- (e) he is, or was, within two (2) years from the filing of the petition or motion for conversion, an underwriter of the outstanding securities of the debtor;
- (f) he is related by consanguinity or affinity within the fourth civil degree to any individual creditor, owner of a sole proprietorship-debtor, partner in a partnership-debtor or stockholder, director, officer, employee or underwriter of a corporate-debtor;
- (g) he has any other direct or indirect material interest in the debtor or any of the creditors; or

- (h) he was the receiver or member of the management committee, the counsel or an employee of either, when there is a showing that the financial distress of the debtor was not arrested or its fiscal condition deteriorated and resulted in its liquidation by reason of his lack of diligence or foresight.

A nominee or an elected or appointed liquidator and their personnel shall immediately disclose to the court any ground that may give rise to an actual or potential conflict of interest, regardless of his personal assessment of its sufficiency, as soon as he becomes aware of it.

If the liquidator is a juridical entity, it must designate a natural person who possesses all the qualifications and none of the disqualifications as its representative, it being understood that the juridical entity and the representative are solidarily liable for all obligations and responsibilities of the liquidator.

SEC. 9. ELECTION OF LIQUIDATOR. – The creditors entitled to vote will elect the liquidator in open court. To constitute a quorum for the election of the liquidator, creditors representing or holding at least a majority of the total claims entitled to vote must be present either in person or by proxy. Only creditors who were included in the schedule of debts and liabilities or registry of claims, or have filed their claims within the period set by the court, and whose claims are not barred by the statute of limitations, are entitled to vote. A secured creditor shall not be entitled to vote, unless: (a) he waives his right under the security or lien; and (b) has the value of the property subject of his security or lien fixed and approved by the court, and is admitted for the balance of his claim. The nominee receiving the highest number of votes cast in terms of the amount of claim held or represented, and who is qualified pursuant to Section 8 of this Rule, shall be appointed as the liquidator.

SEC. 10. COURT-APPOINTED LIQUIDATOR. – The court may appoint the liquidator if:

- (a) on the date set for the election of the liquidator, there is no quorum;
- (b) the creditors who attend either fail or refuse to elect a liquidator;
- (c) after being elected, the liquidator fails to qualify; or
- (d) a vacancy occurs for any reason whatsoever.

In any of these cases, the court, upon motion or *motu proprio*, and for good cause shown, may set another date or hearing for the election of the liquidator. Any person appointed by the court to administer the debtor as a rehabilitation receiver prior to the commencement of the liquidation may subsequently be appointed as its liquidator.

SEC. 11. OATH AND BOND OF THE LIQUIDATOR. – Prior to assuming his office, the liquidator shall take an oath and file a bond, in such amount to be fixed by the court, conditioned upon the proper and faithful discharge of his powers, duties and responsibilities.

SEC. 12. POWERS, DUTIES AND RESPONSIBILITIES OF THE LIQUIDATOR. – The liquidator shall be deemed an officer of the court with the principal duty of preserving and maximizing the value and recovering the assets of the debtor, with the end in view of liquidating them and discharging to the extent possible all the claims against the debtor. The powers, duties and responsibilities of the liquidator shall include, but not be limited to, the following:

- (a) to sue and recover all the assets, debts and claims, belonging or due to the debtor;
- (b) to take possession of all the property of the debtor, except property exempt by law from execution;
- (c) to sell, with the approval of the court, any property of the debtor under his possession or control;
- (d) to redeem all mortgages and pledges, and satisfy any judgment which may constitute an encumbrance on any property sold by him;
- (e) to settle all accounts between the debtor and his creditors, subject to the approval of the court;
- (f) to recover any property, or its value, fraudulently conveyed by the debtor;
- (g) to recommend to the court the creation of a creditors' committee which will assist him in the discharge of his functions and which shall be vested with powers as the court deems just, reasonable and necessary; and
- (h) upon approval of the court, to engage the services of persons with specialized skills or training as may be necessary and reasonable to assist him in the discharge of his duties. Such persons or professionals shall be deemed employees or independent contractors of the liquidator and shall possess the same qualifications as the liquidator.

In addition to the rights and duties of a rehabilitation receiver under Section 31, Chapter II (C) of the FRIA, insofar as they are applicable to liquidation proceedings, the liquidator, shall have the right and duty to take all reasonable steps to manage and dispose of the debtor's assets with a view towards maximizing the proceeds therefrom, to pay creditors and stockholders, and to terminate the debtor's legal existence.

SEC. 13. REMOVAL OF THE LIQUIDATOR. – The liquidator may be removed at any time by the court either *motu proprio* or upon motion by the debtor or any creditor or creditors on any of the following grounds:

- (a) he did not actually receive the highest number of votes during the election for liquidator;
- (b) incompetence, gross negligence, failure to perform or exercise the proper degree of care in the performance of his duties and powers;
- (c) lack of a particular or specialized competency required by the specific case;
- (d) illegal acts or conduct in the performance of his duties and powers;
- (e) lack of any of the qualifications stated under Section 8 of this Rule or presence of any disqualification;
- (f) conflict of interest, unless, waived, expressly or impliedly, by a party who may be prejudiced thereby;
- (g) partiality or lack of independence; or
- (h) any other ground analogous to the foregoing.

SEC. 14. COMPENSATION OF THE LIQUIDATOR. – The liquidator and the persons engaged or employed by him to assist in the discharge of his powers and duties shall be entitled to such reasonable compensation as may be determined by the court, after consultation with the creditors.

SEC. 15. REPORTING REQUIREMENTS. – The liquidator shall make and keep a record of all property received and all disbursements made by him or under his authority as liquidator. He shall render a quarterly report thereof to the court, which report shall be made available to all interested parties. The liquidator shall also submit such reports as may be required by the court from time to time as well as a final report at the end of the liquidation proceedings.

SEC. 16. DISCHARGE OF LIQUIDATOR. – Upon the filing of his final report, and in preparation for the final settlement of all the claims against the debtor, the liquidator will notify all the creditors, either by publication in a newspaper of general circulation or such other mode as the court may direct or allow, that he will apply with the court for the settlement of his account and his discharge from liability as liquidator. The liquidator will file a final accounting with the court, with proof of notice to all creditors. The accounting will be set for hearing. If the court finds the same in order, the court will discharge the liquidator.

SEC. 17. REGISTRY OF CLAIMS. – Within twenty (20) days from his assumption into office, the liquidator shall submit to the court a preliminary registry of claims of secured and unsecured creditors indicating, among others, the amount and nature of each claim, the documentary or other basis for each claim, and a description of the nature and location of every security or lien, if any. Secured creditors who have waived their rights under their security or lien, or have fixed the value of the property subject of their security or lien by agreement with the liquidator and are admitted as creditors for the balance, shall be considered as unsecured creditors. The liquidator shall make the registry available for public inspection, give notice to all the creditors and other interested parties that

the registry is available for inspection and copying, and publish said notice in a newspaper of general circulation in the province or city where the debtor's principal office is located.

D. DETERMINATION OF CLAIMS

SEC. 18. RIGHT OF SET-OFF. – If the debtor and creditor are mutually debtor and creditor of each other, one debt shall be set off against the other and only the balance, if any, shall be allowed in the liquidation proceedings.

SEC. 19. OPPOSITION OR CHALLENGE TO CLAIMS. – Within thirty (30) days from the expiration of the period for the filing of claims, a creditor, debtor, or other interested party may submit to the court an opposition or challenge to any claim or claims, serving a certified copy on the liquidator and the creditor holding the challenged claim. Upon the expiration of the period, the liquidator shall submit to the court the registry of claims containing the undisputed claims that have not been subject to challenge. Such claims shall become final upon the filing of the register and may be subsequently set aside only on grounds of fraud, accident, mistake or excusable neglect.

SEC. 20. SUBMISSION OF DISPUTED CLAIMS TO THE COURT. – The liquidator shall resolve disputed claims and submit his findings thereon to the court for final approval. The liquidator may disallow claims, subject to final approval of the court.

E. AVOIDANCE PROCEEDINGS

SEC. 21. RESCISSION OR NULLITY OF CERTAIN TRANSACTIONS. – Any transaction occurring prior to the issuance of the Liquidation Order or, in the case of conversion of rehabilitation proceedings to liquidation proceedings, prior to the commencement date, entered into by the debtor or involving its assets, may be rescinded or declared null and void on the ground that the same was executed with intent to defraud a creditor or creditors or constitutes an undue preference of creditors. The presumptions set forth in Section 58, Chapter II of the FRIA shall apply.

SEC. 22. ACTIONS FOR RESCISSION OR NULLITY. –

- (a) The liquidator or, with his conformity, a creditor, may initiate and prosecute any action to rescind, or declare null and void, any transaction described in the immediately preceding paragraph. If the liquidator does not consent to the filing or prosecution of such action, any creditor may seek leave of the court to commence and prosecute said action.

The court shall have five working (5) days to act on the motion for leave to commence or prosecute an action.

- (b) If leave of court is granted under subsection (a) hereof, the liquidator shall assign and transfer to the creditor all rights, title and interest in the chose in action or subject matter of the proceeding, including any document in support thereof.
- (c) Any benefit derived from a proceeding taken pursuant to subsection (a) hereof shall belong exclusively to the creditor instituting the proceeding to the extent of his claim and the costs, and the surplus, if any, shall belong to the estate.
- (d) Where, before an order is made under subsection (a) hereof, the 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 proceedings, if instituted within the time limits so fixed, shall belong to the estate.

In any case, the liquidator shall make provisions for any action for rescission or nullity in the Liquidation Plan.

F. THE LIQUIDATION PLAN

SEC. 23. THE LIQUIDATION PLAN. – Within three (3) months from his assumption into office, the liquidator shall submit a Liquidation Plan to the court. The Liquidation Plan shall, as a minimum, enumerate all the assets of the debtor not exempt from execution, a list of all creditors and their claims which have been duly proved as shown in the final registry of claims, and a proposed mode and schedule of liquidation of the assets and payment of the claims. The Liquidation Plan shall make provisions for, among others, disputed claims and any action for rescission or nullity of certain transactions.

SEC. 24. EXEMPT PROPERTY TO BE SET APART. – Upon motion, and after notice and hearing, the court shall set apart property of the individual debtor exempt from execution. The motion shall be heard and granted only after it is shown that the clerk of court has posted or caused notice of the motion and hearing in at least three (3) public places in the province or city where the court exercises jurisdiction at least ten (10) days prior to the time of such hearing, which notice shall set forth the name of the debtor, and the time and place appointed for the hearing of such motion, and shall briefly indicate the homestead sought to be exempted or the property sought to be set aside.

SEC. 25. CONCURRENCE AND PREFERENCE OF CREDITS. – The Liquidation Plan and its implementation shall ensure that the concurrence and preference of credits as enumerated in the Civil Code of the Philippines, and other relevant laws, shall be observed, unless a preferred creditor voluntarily waives his preferred right. For purposes of this Rule, credits for services rendered by employees or laborers to the debtor shall enjoy first preference under Article 2244 of the Civil Code, unless the claims constitute legal liens under Articles 2241 and 2242 thereof.

SEC. 26. SALE OF ASSETS IN LIQUIDATION. – With the approval of the court, the liquidator may sell, transfer or otherwise dispose of the unencumbered assets of the debtor and convert the same into money. The sale, transfer or disposition shall be made at public auction. However, a private sale, transfer or disposition may be allowed with the approval of the court if (a) the goods to be sold are of a perishable nature, or are liable to quickly deteriorate in value, or are disproportionately expensive to keep or maintain; or (b) the private sale, transfer or disposition is for the best interest of the debtor and his creditors. With the approval of the court, unencumbered property of the debtor may also be conveyed to a creditor in satisfaction of his claim or part thereof. In all cases, the liquidator and the court shall ensure that the manner of sale, transfer or disposition is in the best interest of the debtor and his creditors.

SEC. 27. MANNER OF IMPLEMENTING THE LIQUIDATION PLAN. – The liquidator shall implement the Liquidation Plan as approved by the court in an order duly issued therefor. Payments shall be made to creditors only in accordance with the provisions of the Plan.

SEC. 28. FINAL REPORT OF THE LIQUIDATOR. – When all the property of the debtor not exempt from execution have been realized and their proceeds distributed to the creditors in accordance with the Liquidation Plan, the liquidator shall submit his final report to the court, together with the final accounting of his administration and a recommendation for the termination of the proceedings, furnishing all the creditors and other interested parties with copies thereof.

SEC. 29. TERMINATION OF PROCEEDINGS. – If, after notice and hearing, the court is satisfied with the final report, it shall issue an order approving the same and directing the removal of the name of the juridical debtor from the register of legal entities of the SEC and other government agencies, or discharging the individual debtor from his liabilities included in the Liquidation Plan, as the case may be.

In the same order discharging the individual debtor from his liabilities, the court shall state that the proceedings are terminated. However, in the case of a juridical debtor registered with the SEC, the court shall issue an order terminating the proceedings only upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the SEC.

SEC. 30. LIQUIDATION OF A SECURITIES MARKET PARTICIPANT. – The foregoing provisions shall be without prejudice to the power of a regulatory agency or self-regulatory organization to liquidate trade-related claims of clients or customers of a securities market participant which, for purposes of investor protection, are hereby deemed to have absolute priority over other claims of whatever nature or kind insofar as trade-related assets are concerned.

For purposes of this section, trade-related assets include cash, securities, trading right, and other assets owned and used by the securities market participant in the ordinary course of its business.

RULE 5 PROCEDURAL REMEDIES

SEC. 1. MOTION FOR RECONSIDERATION IN SUSPENSION OF PAYMENTS PROCEEDINGS. – A party may file a motion for reconsideration of a Suspension of Payments Order, or any order issued by the court prior to its order confirming or disapproving the proposed agreement mentioned in Section 9, Rule 3 (A) of these Rules. 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.

SEC. 2. REVIEW OF DECISION OR ORDER IN SUSPENSION OF PAYMENTS PROCEEDINGS. – The court's dismissal of the petition for suspension of payments on the ground of insufficiency in form and substance resulting in the non-issuance of a Suspension of Payments Order, and its order confirming or disapproving the proposed agreement mentioned in Section 9, Rule 3 (A) of these Rules 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.

SEC. 3. MOTION FOR RECONSIDERATION IN LIQUIDATION PROCEEDINGS. – A party may file a motion for reconsideration of any order issued by the court prior to the issuance of the Liquidation Order. 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.

SEC. 4. REVIEW OF DECISION OR ORDER IN LIQUIDATION PROCEEDINGS. – The Liquidation Order, and the order approving or disapproving the Liquidation Plan under Section 27, Rule 4 (F) of these Rules 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 6 EFFECTIVITY

SEC. 1. 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.