

EN BANC
Agenda for December 2, 2008
Item No. 76

EN BANC

A.M. NO. 00-8-10-SC

RULES OF PROCEDURE ON CORPORATE REHABILITATION

RESOLUTION

Acting on the recommendation of The Subcommittee on Special Rules for Special Commercial Courts, submitting for the consideration and approval of the Court the proposed “Rules of Procedure on Corporate Rehabilitation (2008),” the Court Resolved to **APPROVE** the same.

The Rule shall take effect on January 16, 2009 following its publication in two (2) newspapers of general circulation.

December 2, 2008.

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANTONIO T. CARPIO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

RUBEN T. REYES
Associate Justice

TERESITA J. LEONARDO DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

RULES OF PROCEDURE ON CORPORATE REHABILITATION (2008)

RULE 1 COVERAGE

SECTION 1. *Scope.*—These Rules shall apply to petitions for rehabilitation of corporations, partnerships and associations pursuant to Presidential Decree No. 902-A, as amended.

SEC. 2. *Applicability to Rehabilitation Cases Transferred from the Securities and Exchange Commission.*—Cases for rehabilitation transferred from the Securities and Exchange Commission to the Regional Trial Courts pursuant to Republic Act No. 8799, otherwise known as The Securities Regulation Code, shall likewise be governed by these Rules.

RULE 2 DEFINITION OF TERMS AND CONSTRUCTION

SEC. 1. *Definition of Terms.*—For purposes of these Rules:

“*Administrative Expenses*” shall refer to (a) reasonable and necessary expenses that are incurred in connection with the filing of the petition; (b) expenses incurred in the ordinary course of business after the issuance of the stay order, excluding interest payable to the creditors for loans and credit accommodations existing at the time of the issuance of the stay order; and (c) other expenses that are authorized under these Rules.

“*Affidavit of General Financial Condition*” shall refer to a verified statement on the general financial condition of the debtor required in Section 2, Rule 4 of these Rules.

“*Affiliate*” is a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation.

“*Asset*” is anything of value that can be in the form of money, such as cash at the bank or amounts owed; fixed assets such as property or equipment; or intangibles including intellectual property, the book value of which is shown in the last three audited financial statements immediately

preceding the filing of the petition. In case the debtor is less than three years in operation, it is sufficient that the book value is based on the audited financial statement/s for the two years or year immediately preceding the filing of the petition, as the case may be.

“*Board of Directors*” shall include the executive committee or the management of a partnership or association.

“*Claim*” shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

“*Control*” is the power of a parent corporation to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one-half (1/2) of the voting power of an enterprise unless, in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half (1/2) or less of the voting power of an enterprise when there is power:

- (a) Over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;
- (b) To direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
- (c) To appoint or remove the majority of the members of the board of directors or equivalent governing body; or
- (d) To cast the majority votes at meetings of the board of directors or equivalent governing body.

“*Creditor*” shall mean any holder of a Claim.

“*Court*” shall refer to the proper Regional Trial Court designated to hear and decide the cases contemplated under these Rules.

“*Days*” shall refer to calendar days unless otherwise provided in these Rules.

“*Debtor*” shall mean any corporation, partnership or association or a group of companies, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules.

“*Foreign court*” means a judicial or other authority competent to control or supervise a foreign proceeding.

“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 or re-organization.

“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.

“Group of companies” refers to, and can cover only, corporations that are financially related to one another as parent corporations, subsidiaries and affiliates.

When the petition covers a group of companies, all reference under these Rules to “debtor” shall include and apply to the group of companies.

“Liabilities” shall refer to monetary claims against the debtor, including stockholder’s advances that have been recorded in the debtor’s audited financial statements as advances for future subscriptions.

“Parent” is a corporation which has control over another corporation directly or indirectly through one or more intermediaries.

“Rehabilitation” shall mean the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.

“Secured claim” shall refer to any claim whose payment or fulfillment is secured by contract or by law, including any claim or credit enumerated under Articles 2241 and 2242 of the Civil Code and Article 110, as amended, of the Labor Code of the Philippines.

“Subsidiary” means a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly through one or more intermediaries by another corporation, which thereby becomes its parent corporation.

“*Unsecured claim*” shall mean any claim other than a secured claim.

SEC. 2. *Construction*.—These Rules shall be liberally construed to carry out the objectives of Sections 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious and inexpensive determination of cases. Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

RULE 3 GENERAL PROVISIONS

SEC. 1. *Nature of Proceedings*.—Any proceeding initiated under these Rules shall be considered *in rem*. Jurisdiction over all persons affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines in the manner prescribed by these Rules.

The proceedings shall also 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;
- (f) Third-party complaint;
- (g) Intervention;
- (h) Motion to hear affirmative defenses; and
- (i) Any pleading or motion which is similar to or of like effect as any of the foregoing.

Any pleading, motion, opposition, defense or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records, and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits. The court may decide matters on the basis of affidavits and other documentary evidence. Where necessary, the court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.

SEC. 2. *Venue*.—Petitions for rehabilitation pursuant to these Rules shall be filed 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, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the regional trial court of the city or municipality where the head office is located.

A joint petition by a group of companies shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the parent company, as specified in its Articles of Incorporation.

SEC. 3. *Service of Pleadings and Documents*.—When so authorized by the court, any pleading and/or document required by these Rules may be filed with the court and/or served upon the other parties by facsimile transmission (fax) or electronic mail (e-mail). In such cases, the date of transmission shall be deemed to be the date of service. Where the pleading or document is voluminous, the court may, upon motion, waive the requirement of service; *provided* that a copy thereof together with all its attachments is duly filed with the court and is made available for examination and reproduction by any party, and *provided*, further, that a notice of such filing and availability is duly served on the parties.

SEC. 4. *Trade Secrets and Other Confidential Information*.—Upon motion, the court may issue an order to protect trade secrets or other confidential research, development or commercial information belonging to the debtor.

SEC. 5. *Executory Nature of Orders*.—Any order issued by the court under these Rules is immediately executory. A petition to review the order shall not stay the execution of the order unless restrained or enjoined by the appellate court. Unless otherwise provided in these Rules, the review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court; *provided*, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable and speedy manner.

SEC. 6. *Nullification of Illegal Transfers and Preferences*.—Upon motion the court may nullify any transfer of property or any other conveyance, sale, payment or agreement made in violation of its stay order or in violation of these Rules.

SEC. 7. *Stay Order*.—If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; *provided*, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided*, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; *provided*, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities except as provided in items (e), (f) and (g) of this Section or when ordered by the court pursuant to Section 10 of Rule 3; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) directing the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval; (h) fixing the dates of the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (i) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (j) directing the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the creditors named in the petition and the appropriate regulatory agencies such as, but not limited to, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission; (k) directing the petitioner that foreign creditors with no known addresses in the Philippines be individually given a copy of the stay order at their foreign addresses; (l) directing all creditors 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 and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (m) directing the creditors and

interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor.

SEC. 8. *Service of Stay Order on Rehabilitation Receiver.*—The petitioner shall immediately serve a copy of the stay order on the rehabilitation receiver appointed by the court, who shall manifest his acceptance or non-acceptance of his appointment not later than ten (10) days from receipt of the order.

SEC. 9. *Period of Stay Order.*—The stay order shall be effective from the date of its issuance until the approval of the rehabilitation plan or the dismissal of the petition.

SEC. 10. *Relief from, Modification, or Termination of Stay Order.*—

(a) The court may, upon motion, terminate, modify, or set conditions for the continuance of the stay order, or relieve a claim from the coverage thereof upon showing that (1) any of the allegations in the petition, or any of the contents of any attachment, or the verification thereof has ceased to be true; (2) a creditor does not have adequate protection over property securing its claim; (3) the debtor's secured obligation is more than the fair market value of the property subject of the stay and such property is not necessary for the rehabilitation of the debtor; or (4) the property covered by the stay order is not essential or necessary to the rehabilitation and the creditor's failure to enforce its claim will cause more damage to the creditor than to the debtor.

(b) For purposes of this Section, the creditor lacks adequate protection if it can be shown that:

- (1) The debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;
- (2) The debtor fails or refuses to take commercially reasonable steps to maintain the property; or
- (3) The property has depreciated to an extent that the creditor is undersecured.

(c) Upon showing of the creditor's lack of adequate protection, the court shall order the rehabilitation receiver to (1) make arrangements to provide for the insurance or maintenance of the property, or (2) 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 shall modify the stay order to allow the secured creditor lacking adequate protection to enforce its claim against the debtor; *provided*, however, that the court may deny the creditor the remedies in this paragraph if such remedies would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

SEC. 11. *Qualifications of Rehabilitation Receiver.*—

(a) In the appointment of the rehabilitation receiver, the following qualifications shall be taken into consideration by the court:

- (1) Expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor;
- (2) Knowledge in management, finance and rehabilitation of distressed companies;
- (3) General familiarity with the rights of creditors in suspension of payments or rehabilitation, and general understanding of the duties and obligations of a rehabilitation receiver;
- (4) Good moral character, independence and integrity;
- (5) Lack of conflict of interest as defined in this Section; and
- (6) Willingness and ability to file a bond in such amount as may be determined by the court.

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

- (1) He is a creditor or stockholder of the debtor;
- (2) He is engaged in a line of business which competes with the debtor;
- (3) He is, or was within two (2) years from the filing of the petition, a director, officer, or employee of the debtor or any

of its present creditors, or the auditor or accountant of the debtor;

- (4) He is or was within two (2) years from the filing of the petition, an underwriter of the outstanding securities of the debtor;
- (5) He is related by consanguinity or affinity within the fourth civil degree to any creditor, stockholder, director, officer, employee, or underwriter of the debtor; or
- (6) He has any other direct or indirect material interest in the debtor or any creditor.

SEC. 12. *Powers and Functions of Rehabilitation Receiver.*—The rehabilitation receiver shall not take over the management and control of the debtor but shall closely oversee and monitor the operations of the debtor during the pendency of the proceedings. For this purpose, the rehabilitation receiver shall have the powers, duties and functions of a receiver under Presidential Decree No. 902-A, as amended, and the Rules of Court.

The rehabilitation receiver shall be considered as an officer of the court. He shall be primarily tasked to study the best way to rehabilitate the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval. Accordingly, he shall have the following powers and functions:

- (a) To verify the accuracy of the petition, including its annexes such as the *Schedule of Debts and Liabilities* and the *Inventory of Assets* submitted in support of the petition;
- (b) To accept and incorporate, when justified, amendments to the *Schedule of Debts and Liabilities*;
- (c) 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 review by the creditors, 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 examine under oath the directors and officers of the debtor and any other witnesses that he may deem appropriate;
- (g) To make available to the creditors documents and notices necessary for them to follow and participate in the proceedings;
- (h) To report to the court any fact ascertained by him pertaining 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;
- (i) To employ such person or persons such as lawyers, accountants, appraisers and staff as are necessary in performing his functions and duties as rehabilitation receiver;
- (j) To monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business;
- (k) To evaluate the existing assets and liabilities, earnings and operations of the debtor;
- (l) To determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders and the general public;
- (m) To study the rehabilitation plan proposed by the debtor or any rehabilitation plan submitted during the proceedings, together with any comments made thereon;
- (n) 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;
- (o) To prohibit and report to the court any payments outside of the ordinary course of business;
- (p) To have unlimited access to the debtor's employees, premises, books, records and financial documents during business hours;
- (q) To inspect, copy, photocopy or photograph any document, paper, book, account or letter, whether in the possession of the debtor or other persons;
- (r) To gain entry into any property for the purpose of inspecting, measuring, surveying or photographing it or any designated relevant object or operation thereon;
- (s) To take possession, control and custody of the debtor's assets;
- (t) To notify counterparties and the court as to contracts that the debtor has decided to continue to perform or breach;
- (u) To be notified of and to attend all meetings of the board of directors and stockholders of the debtor;
- (v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate;

- (w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan;
- (x) To recommend the appointment of a management committee in the cases provided for under Presidential Decree No. 902-A, as amended;
- (y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors or the general public;
- (z) 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; and
- (aa) To exercise such other powers as may from time to time be conferred upon him by the court.

SEC. 13. *Oath and Bond.*—Before entering upon his powers, duties and functions, the rehabilitation receiver must be sworn in to perform them faithfully, and must post a bond executed in favor of the debtor in such sum as the court may direct, to guarantee that he will faithfully discharge his duties and obey the orders of the court. If necessary, he shall also declare under oath that he will perform the duties of a trustee of the assets of the debtor, will act honestly and in good faith, and deal with the assets of the debtor in a commercially reasonable manner.

SEC. 14. *Fees and Expenses.*—The rehabilitation receiver and the persons hired by him shall be entitled to reasonable professional fees and reimbursement of expenses which shall be considered as administrative expenses.

SEC. 15. *Immunity from Suit.*—The rehabilitation receiver shall not be subject to any action, claim or demand in connection with any act done or omitted by him in good faith in the exercise of his functions and powers herein conferred.

SEC. 16. *Reports.*—The rehabilitation receiver shall file a written report every three (3) months to the court or as often as the court may require on the general condition of the debtor. The report shall include, at the minimum, interim financial statements of the debtor.

SEC. 17. *Dismissal of Rehabilitation Receiver.*—A rehabilitation receiver may, upon motion, be dismissed by the court on the following grounds: (a) if he fails, without just cause, to perform any of his powers

and functions under these Rules; or (b) on any of the grounds for removing a trustee under the general principles of trusts.

SEC. 18. *Rehabilitation Plan.*—The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non-impairment of their security liens or interests; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale or exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

SEC. 19. *Repayment Period.*—If the rehabilitation plan extends the period for the debtor to pay its contractual obligations, the new period should not extend beyond fifteen (15) years from the expiration of the stipulated term existing at the time of filing of the petition.

SEC. 20. *Effects of Rehabilitation Plan.*—The approval of the rehabilitation plan by the court shall result in the following:

- (a) The plan and its provisions shall be binding upon 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 out the plan;
- (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 be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and

- (e) Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented.

SEC. 21. *Revocation of Rehabilitation Plan on Grounds of Fraud.*—Upon motion, within ninety (90) days from the approval of the rehabilitation plan, and after notice and hearing, the court may revoke the approval thereof on the ground that the same was secured through fraud.

SEC. 22. *Alteration or Modification of Rehabilitation Plan.*—An approved rehabilitation plan may, upon motion, be altered or modified if, in the judgment of the court, such alteration or modification is necessary to achieve the desired targets or goals set forth therein.

SEC. 23. *Termination of Proceedings.*—The court shall, upon motion or upon recommendation of the rehabilitation receiver, terminate the proceeding in any of the following cases:

- (a) Dismissal of the petition;
- (b) Failure of the debtor to submit the rehabilitation plan;
- (c) Disapproval of the rehabilitation plan by the court;
- (d) Failure to achieve the desired targets or goals as set forth in the rehabilitation plan;
- (e) Failure of the debtor to perform its obligations under the plan;
- (f) Determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or
- (g) Successful implementation of the rehabilitation plan.

SEC. 24. *Discharge of Rehabilitation Receiver.*—Upon termination of the rehabilitation proceedings, the rehabilitation receiver shall submit his final report and accounting within such period of time as the court will allow him. Upon approval of his report and accounting, the court shall order his discharge.

RULE 4

DEBTOR-INITIATED REHABILITATION

SEC. 1. *Who May Petition.*—Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, may petition the proper regional trial court for rehabilitation.

A group of companies may jointly file a petition for rehabilitation under these Rules when one or more of its constituent corporations foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other member companies of the group and/or the participation of the other member companies of the group is essential under the terms and conditions of the proposed rehabilitation plan.

SEC. 2. *Contents of Petition.*—

(a) The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts: (1) the name and business of the debtor; (2) the nature of the business of the debtor; (3) the history of the debtor; (4) the cause of its inability to pay its debts; (5) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (6) threats or demands to enforce claims or liens against the debtor; and (7) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees and stockholders.

(b) The petition shall be accompanied by the following documents:

- (1) An audited financial statement of the debtor at the end of its last fiscal year;
- (2) Interim financial statements as of the end of the month prior to the filing of the petition;
- (3) 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 as of the date of filing; the nature of the claim; and any pledge, lien, mortgage judgment or other security given for the payment thereof;
- (4) An *Inventory of Assets* which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor 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

lienholders and claimants. The Inventory shall include a *Schedule of Accounts Receivable* which must indicate the amount of each, the persons from whom due, the date of maturity and the degree of collectibility categorizing them as highly collectible to remotely collectible;

- (5) A rehabilitation plan which conforms with the minimal requirements set out in Section 18 of Rule 3;
- (6) A *Schedule of Payments and Disposition of Assets* which the debtor may have effected within three (3) months immediately preceding the filing of the petition;
- (7) 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;
- (8) 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;
- (9) An *Affidavit of General Financial Condition* which shall contain answers to the questions or matters prescribed in Annex "A" hereof;
- (10) 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 address; and
- (11) A certificate attesting under oath that (i) the filing of the petition has been duly authorized; and (ii) the directors and stockholders of the debtor have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

(c) Five (5) copies of the petition shall be filed with the court.

SEC. 3. *Verification by Debtor.*—The petition filed by the debtor must be verified by an affidavit of a responsible officer of the debtor and shall be in a form substantially as follows:

"I, _____, (position) of (name of petitioner), do solemnly swear that the petitioner has been duly authorized to file the petition and that the stockholders 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. The petition is being filed to protect the interests of the debtor, the stockholders, the investors and the creditors of the debtor, which warrant the appointment of a rehabilitation receiver. There is no petition for insolvency filed with any other body, court or tribunal affecting the petitioner. The *Inventory of Assets* and the *Schedule of Debts and Liabilities* contains a 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 petitioner. The *Inventory* also contains a full, correct and true statement of all debts owing or due to petitioner, or to any person or persons in trust for petitioner and of all securities and contracts whereby any money may hereafter become due or payable to petitioner or by or through which any benefit or advantage may accrue to petitioner. The petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of petitioner. Petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the *Inventory of Assets*. Petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount. Petitioner, its officers, directors and stockholders have not, directly or indirectly, concealed, fraudulently sold or otherwise fraudulently disposed of, any part of petitioner's real or personal property, estate, effects or rights of action, and 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 petitioner is indebted. Petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence.

SEC. 4. *Opposition to or Comment on Petition.*—Every creditor of the debtor or any interested party shall file his verified opposition to or comment on the petition not later than fifteen (15) days before the date of the initial hearing fixed in the stay order. After such time, no creditor or interested party shall be allowed to file any comment thereon or opposition thereto without leave of court.

If the *Schedule of Debts and Liabilities* omits a claim or liability, the creditor concerned shall attach to its comment or opposition a verified statement of the obligations allegedly due it.

SEC. 5. *Initial Hearing.*—

(a) On or before the initial hearing set in the order mentioned in Section 7 of Rule 3, the petitioner shall file a publisher's affidavit showing that the publication requirements and a petitioner's affidavit showing that the notification requirement for foreign creditors had been complied with, as required in the stay order.

(b) Before proceeding with the initial hearing, the court shall determine whether the jurisdictional requirements set forth above had been complied with. After finding that such requirements are met, the court shall ensure that the parties consider in detail all of the following:

- (1) Amendments to the rehabilitation plan proposed by the debtor;
- (2) Simplification of the issues;
- (3) The possibility of obtaining stipulations and admission of facts and documents, including resort to request for admission under Rule 26 of the Rules of Court;
- (4) The possibility of amicably agreeing on any issue brought up in the comments on, or opposition to, the petition;
- (5) Referral of any accounting, financial and other technical issues to an expert;
- (6) The possibility of submitting the petition for decision on the basis of the comments, opposition, affidavits and other documents on record;
- (7) The possibility of a new rehabilitation plan voluntarily agreed upon by the debtor and its creditors; and
- (8) Such other matters as may aid in the speedy and summary disposition of the case.

SEC. 6. *Additional Hearings.*—The court may hold additional hearings as part of the initial hearing contemplated in these Rules but the initial hearing must be concluded not later than ninety (90) days from the initial date of the initial hearing fixed in the stay order.

SEC. 7. *Order After Initial Hearing.*—

(a) Within twenty (20) days after the last hearing, the court shall issue an order which shall:

- (1) Give due course to the petition and immediately refer the petition and its annexes to the rehabilitation receiver who shall evaluate the rehabilitation plan and submit his recommendations to the court not later than ninety (90) days from the date of the last initial hearing, if the court is satisfied that there is merit to the petition, otherwise the court shall immediately dismiss the petition; and
- (2) Recite in detail the matters taken up in the initial hearing and the actions taken thereon, including a substitute rehabilitation plan contemplated in Sections 5 (b)(7) and (8) of this Rule;

(b) If the debtor and creditors agree on a new rehabilitation plan pursuant to Section 5 (b)(7) of this Rule, the order shall so state the fact and require the rehabilitation receiver to supply the details of the plan and submit it for the approval of the court not later than sixty (60) days from the date of the last initial hearing. The court shall approve the new rehabilitation plan not later than ninety (90) days from the date of the last initial hearing upon concurrence of the following:

- (1) 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;
- (2) The rehabilitation plan complies with the requirements specified in Section 18 of Rule 3;
- (3) The rehabilitation plan would provide the objecting class of creditors with payments whose present value projected in the plan would be greater than that which they would have

received if the assets of the debtor were sold by a liquidator within a six (6)-month period from the date of filing of the petition; and

- (4) The rehabilitation receiver has recommended approval of the plan.

The approval by the court of the new rehabilitation plan shall have the same effect as approval of a rehabilitation plan under Section 20 of Rule 3.

SEC. 8. *Creditors' Meetings.*—If no new rehabilitation plan is agreed upon by the debtor and the creditors, the rehabilitation receiver, at any time before he submits his evaluation on the debtor-proposed rehabilitation plan to the court as prescribed in Section 7(a)(1) of this Rule, shall, either alone or with the debtor, meet with the creditors or any interested party to discuss the plan with a view to clarifying or resolving any matter connected therewith.

SEC. 9. *Comments on or Opposition to Rehabilitation Plan.*—Any creditor or interested party of record may file comments on or opposition to the proposed rehabilitation plan, with a copy given to the rehabilitation receiver, not later than sixty (60) days from the date of the last initial hearing. The court shall conduct summary and non-adversarial proceedings to receive evidence, if necessary, in hearing the comments on and opposition to the plan.

SEC. 10. *Modification of Proposed Rehabilitation Plan.*—The debtor may modify its rehabilitation plan in the light of the comments of the rehabilitation receiver and creditors or any interested party and submit a revised or substitute rehabilitation plan for the final approval of the court. Such rehabilitation plan must be submitted to the court not later than ten (10) months from the date of the date of filing of the petition.

SEC. 11. *Approval of Rehabilitation Plan.*—The court may approve a rehabilitation plan even over the opposition of creditors of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The opposition of the creditors is manifestly unreasonable if the following are present:

- (a) The rehabilitation plan complies with the requirements specified in Section 18 of Rule 3;

- (b) The rehabilitation plan would provide the objecting class of creditors with payments whose present value projected in the plan would be greater than that which they would have received if the assets of the debtor were sold by a liquidator within a six (6)-month period from the date of filing of the petition; and
- (c) The rehabilitation receiver has recommended approval of the plan.

In approving the rehabilitation plan, the court shall ensure that the rights of the secured creditors are not impaired. The court shall also issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

SEC. 12. *Period to Decide Petition.*—The court shall decide the petition within one (1) year from the date of filing of the petition, unless the court, for good cause shown, is able to secure an extension of the period from the Supreme Court.

RULE 5

CREDITOR-INITIATED REHABILITATION

SEC. 1. *Who May Petition.*—Any creditor or creditors holding at least twenty percent (20%) of the debtor's total liabilities may file a petition with the proper regional trial court for rehabilitation of a debtor that cannot meet its debts as they respectively fall due.

SEC. 2. *Requirements for Creditor-Initiated Petitions.*—Where the petition is filed by a creditor or creditors under this Rule, it is sufficient that the petition is accompanied by a rehabilitation plan and a list of at least three (3) nominees to the position of rehabilitation receiver and verified by a sworn statement that the affiant has read the petition and that its contents are true and correct of his personal knowledge or based on authentic records and that the petition is being filed to protect the interests of the debtor, the stockholders, the investors and the creditors of the debtor.

SEC. 3. *Applicability of Provisions Relating to Debtor-Initiated Rehabilitation.*—The provisions of Sections 5 to 12 of Rule 4 shall apply to rehabilitation under this Rule.

RULE 6

PRE-NEGOTIATED REHABILITATION

SEC. 1. *Pre-negotiated Rehabilitation Plan.*—A debtor that foresees the impossibility of meeting its debts as they fall due may, by itself or jointly with any of its creditors, file a verified petition for the approval of a pre-negotiated rehabilitation plan. The petition shall comply with Section 2 of Rule 4 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.

SEC. 2. *Issuance of Order.*—If the court finds the petition sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order which shall:

- (a) Identify the debtor, its principal business or activity/ies and its principal place of business;
- (b) Direct the publication of the order in a newspaper of general circulation 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;
- (c) Direct the service by personal delivery of a copy of the petition on each creditor who is not a petitioner holding at least five percent (5%) of the total liabilities of the debtor, as determined in the schedule attached to the petition, within three (3) days;
- (d) Direct the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the relevant regulatory agency;
- (e) State that copies of the petition and the rehabilitation plan are available for examination and copying by any interested party;
- (f) Direct creditors and other parties interested (including the Securities and Exchange Commission and the relevant

regulatory agencies such as, but not limited to, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission) in opposing the petition or rehabilitation plan to file their verified objections thereto or comments thereon within a period of not later than twenty (20) days from the second publication of the order, with a warning that failure to do so will bar them from participating in the proceedings;

- (g) Appoint the rehabilitation receiver named in the plan, unless the court finds that he is not qualified under these Rules in which case it may appoint a qualified rehabilitation receiver of its choice;
- (h) Stay enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; *provided*, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided* further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; *provided*, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor;
- (i) Prohibit the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
- (j) Prohibit the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition;
- (k) Prohibit the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order;
- (l) Direct the payment in full of all administrative expenses incurred after the issuance of the stay order; and

- (m) Direct the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval.

SEC. 3. *Approval of Plan.*—Within ten (10) days from the date of the second publication of the order referred to in Section 2 of this Rule, the court shall approve the rehabilitation plan unless a creditor or other interested party submits a verified objection to it in accordance with the next succeeding section.

SEC. 4. *Objection to Petition or Rehabilitation Plan.*—Any creditor or other interested party may submit to the court a verified objection to the petition or the rehabilitation plan. The objections shall be limited to the following:

- (a) The petition or the rehabilitation plan or their attachments contain material omissions or are materially false or misleading;
- (b) The terms of rehabilitation are unattainable; or
- (c) The approval or endorsement of creditors required under Section 1 of this Rule has not been obtained

Copies of any objection to the petition or the rehabilitation plan shall be served on the petitioning debtor and/or creditors.

SEC. 5. *Hearing on Objections.*—The court shall set the case for hearing not earlier than ten (10) days and no later than twenty (20) days from the date of the second publication of the order mentioned in Section 2 of this Rule on the objections to the petition or rehabilitation plan. If the court finds that the objection is in accordance with the immediately preceding section, it shall direct the petitioner to cure the defect within a period fifteen (15) days from receipt of the order.

SEC. 6. *Period for Approval of Rehabilitation Plan.*—The court shall decide the petition not later than one hundred twenty (120) days from the date of the filing of the petition. If the court fails to do so within said period, the rehabilitation plan shall be deemed approved

SEC. 7. *Effects of Approval of Rehabilitation Plan.*—Approval of the rehabilitation plan under this Rule shall have the same legal effect as approval of a rehabilitation plan under Section 20 of Rule 3.

SEC. 8. *Revocation of Approved Rehabilitation Plan.*—Not later than thirty (30) days from the approval of a rehabilitation plan under this Rule, the plan may, upon motion and after notice and hearing, be revoked on the ground that the approval was secured by fraud or that the petitioner has failed to cure the defect ordered by the court pursuant to Section 5 of this Rule.

SEC. 9. *Effect of Rule on Pending Petitions.*—Any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules may be converted into a rehabilitation proceeding under this Rule.

RULE 7

RECOGNITION OF FOREIGN 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 domestic proceeding governed by these Rules; or (c) a foreign proceeding and a domestic proceeding are concurrently taking place.

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.

SEC. 2. *Non-Recognition of Foreign Proceeding.*—Nothing in this Rule prevents the court from refusing to take an action governed by this Rule if (a) the action would be manifestly contrary to the public policy of the Philippines; and (b) if the court finds that the country of which the petitioner is a national does not grant recognition to a Philippine rehabilitation proceeding in a manner substantially in accordance with this Rule.

SEC. 3. *Petition for Recognition of Foreign Proceeding.*—A foreign representative may apply with the Regional Trial Court where the debtor resides for recognition of the foreign proceeding in which the foreign representative has been appointed.

A petition for recognition shall be accompanied by:

- (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

SEC. 4. *Recognition of Foreign Proceeding.*—A foreign proceeding shall be recognized if:

- (a) The proceeding is a foreign proceeding as defined herein;
- (b) The person or body applying for recognition is a foreign representative as defined herein; and
- (c) The petition meets the requirements of Section 3 of this Rule;

SEC. 5. *Period to Recognize Foreign Proceeding.*—A petition for recognition of a foreign proceeding shall be decided within thirty (30) days from the filing thereof.

SEC. 6. *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.

SEC. 7. *Provisional Relief that May be Granted upon Application for Recognition of Foreign Proceeding.*—From the time of filing a petition for recognition 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, 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 Sections 9(a)(1), (2) and (7) of this Rule.

SEC. 8. *Effects of Recognition of Foreign Proceeding.*—Upon recognition of a foreign proceeding:

- (a) 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 individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (b) Execution against the debtor's assets is stayed; and
- (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

SEC. 9. *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 8(a) of this Rule;
- (2) Staying execution against the debtor's assets to the extent it has not been stayed under Section 8(b) of this Rule;

- (3) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under Section 8(c) 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) Extending the relief granted under Section 7 of this Rule;
- (7) Granting any additional relief that may be available to the rehabilitation receiver under these laws.

(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. 10. *Protection of Creditors and Other Interested Persons.*—

(a) In granting or denying relief under this Rule or in modifying or terminating the relief under paragraph (c) of this Section, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(b) The court may subject the relief granted under Section 7 or Section 9 of this Rule to conditions it considers appropriate.

(c) The court may, upon motion of the foreign representative or a person affected by the relief granted under Section 7 or Section 9 of this Rule, or on its own motion, modify or terminate such relief.

SEC. 11. *Actions to Avoid Acts Detrimental to Creditors.*—Upon recognition of a foreign proceeding, the foreign representative acquires the standing to initiate actions to avoid or otherwise render ineffective acts detrimental to creditors that are available under these Rules.

SEC. 12. *Intervention by Foreign Representative in Philippine Proceedings.*—Upon recognition of a foreign proceeding, the foreign representative may intervene in any action or proceeding in the Philippines in which the debtor is a party.

SEC. 13. *Cooperation and Direct Communication with Foreign Courts and Foreign Representatives.*—In matters covered by this Rule, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives.

The court is entitled to communicate directly with, or request information or assistance directly from, foreign courts or foreign representatives.

SEC. 14. *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. 15. *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 13 and 14 of this Rule, to the other assets of the debtor that, under local laws, must be administered in that proceeding.

SEC. 16. *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 13 and 14 of this Rule. Any relief granted to the foreign proceeding must be made consistent with the relief granted in the local proceeding.

RULE 8

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. Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or disapproving the rehabilitation plan.

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 review to the Court of Appeals under Rule 43 of the Rules of Court within fifteen (15) days from notice of the decision or order.

RULE 9

FINAL PROVISIONS

SEC. 1. *Severability*.—If any provision or section of these Rules is held invalid, the other provisions or sections shall not be affected thereby.

SEC. 2. *Transitory Provision*.—Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules shall be governed by these Rules.

SEC. 3. *Effectivity*.—These Rules shall take effect on 16 January 2009 following its publication in two (2) newspapers of general 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) Has the debtor 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) Have all proper returns been made to the various government agencies requiring same?
- (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, so, 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 do you estimate is needed to rehabilitate the debtor?
- (25) Has any person expressed interest in investing new money into 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?