

Philippines

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Insolvency in the Philippines is governed by special legislation, insofar as this is not inconsistent with the Civil Code of the Philippines, which is Spanish in origin. The special law setting out the insolvency regime is the Insolvency Law, promulgated in 1909.

The Insolvency Law was among the early Philippine commercial laws that were adopted directly from a US statutory model – in this case, the Insolvency Act of California of 1895. Philippine legislation makes no distinction between bankruptcy and insolvency.

The Insolvency Law remained largely untouched for nearly 60 years and gradually became increasingly inadequate for the needs of modern businesses. Presidential Decree 902-A was therefore passed in 1976 in a bid to create a more favourable commercial climate to attract domestic and foreign investment. This law increased the scope of suspension of payments, allowing even corporations whose liabilities exceeded their assets to suspend payments to creditors while undergoing rehabilitation proceedings. This law was administered by the Securities and Exchange Commission, which was granted jurisdiction over intra-corporate disputes and the authority to approve corporate rehabilitation plans.

This new regime in turn prompted calls for the introduction of procedural rules that would standardise proceedings before the Securities and Exchange Commission, which tended to be somewhat *ad hoc*. The Rules of Procedure on Corporate Recovery were issued in 1999. Eventually, the Securities Regulation Code, promulgated on July 19 2000, transferred jurisdiction over corporate recovery proceedings from the Securities and Exchange Commission to the regional trial courts, to allow the commission to focus on the regulation and supervision of the securities market rather than administration of corporate disputes and rehabilitation.

Following this transfer of jurisdiction to the regional trial courts, the Supreme Court passed the Interim Rules on Corporate Rehabilitation to govern such proceedings. The Supreme Court also passed the Interim Rules on Intra-corporate Disputes, which provided for the appointment of a management committee in cases filed under the rehabilitation rules.

The existing corporate rehabilitation and insolvency procedures may be described as court-driven, and as such do not afford creditors much scope to participate in the process.

1. Legal framework and the effectiveness of court processes/legal remedies

1.1 Describe the nature and effectiveness of the following:

(a) Debt recovery remedies where the creditor has no security

An unsecured creditor must file a civil action in court for collection of the debt. At the commencement of the action, or at any time prior to judgment,

the creditor may apply for the issue of a writ of preliminary attachment on the debtor's assets, but only on specified grounds (eg, if the debtor is about to leave the Philippines with the intent to defraud creditors, or is guilty of fraud in contracting or performing the obligation in regards to which the action is brought).

Debt collection suits are often protracted and expensive. It may take several years before a judgment is rendered, and the judgment of the trial court can be appealed all the way to the Supreme Court.

While foreign creditors can generally institute a debt collection suit, a foreign corporation doing business in the Philippines without a licence to do business in the jurisdiction is not permitted to initiate or intervene in any judicial action in the Philippines.

(b) The enforcement of security

The common security devices over property that are specifically provided for by law are real estate mortgage, chattel mortgage and pledge.

Upon default by the debtor, a creditor can enforce a real estate mortgage by either judicial or extra-judicial foreclosure. Judicial foreclosure is effected by filing an action with the appropriate court. If the court finds that the complaint has merit, it will order the debtor to pay the amount due, together with interest and costs. If the debtor fails to pay within the period directed by the court, the mortgaged property is sold by public auction. Extra-judicial foreclosure is available only where allowed by the mortgage contract. In this case, the creditor effects the sale of the mortgaged property by public auction conducted by a sheriff or notary public. As judicial foreclosure is time consuming and expensive, mortgage contracts usually allow the creditor to foreclose the mortgage extra-judicially.

In the case of a chattel mortgage, once 30 days have elapsed following the debtor's default, the mortgagee may cause the mortgaged property to be sold by a public officer at public auction. However, if the debtor refuses to deliver possession of the property, the creditor may either:

- resort to a civil action to obtain possession as a preliminary to a public auction; or
- bring an action to obtain judicial foreclosure.

In the case of a pledge, a creditor whose claim is not satisfied in due time may proceed before a notary public for the sale of the pledged property at public auction.

In the case of both a real estate mortgage and a chattel mortgage, the creditor can sue the debtor for any shortfall if the proceeds of the foreclosure sale are insufficient to satisfy the claim in full.

In the case of a pledge, the sale of the property extinguishes the principal obligation, irrespective of whether the proceeds of sale are equal to the amount of the obligation. The creditor is not entitled to recover any shortfall and any contractual stipulation to the contrary is void.

(c) Corporate bankruptcy/liquidation processes

Insolvency proceedings are governed principally by the Insolvency Law and the Civil Code. Insolvency proceedings may be commenced in court at the petition of the debtor (voluntary insolvency) or at least three of its creditors (involuntary insolvency). In voluntary insolvency, the debtor has insufficient assets to pay its debts in full, while in involuntary insolvency, the debtor has committed an act of insolvency (eg, the debtor has left or is about to leave the Philippines with the intent to defraud creditors, or has concealed or is removing assets to avoid their attachment or seizure).

The liquidation of corporate assets may occur under the Insolvency Law where the insolvency court has issued an adjudication of insolvency. Liquidation takes place when the assignee appointed to take charge of the debtor's assets realises all assets assigned to and recovered by him. Creditors' claims are then satisfied from the liquidation proceeds. However, liquidation under the Insolvency Law does not involve termination of the business or dissolution of the corporation. Moreover, the corporation is not discharged from unsatisfied debts or claims.

Alternatively, the claims may be settled by agreement between the debtor and its creditors. Once the schedule of debts and inventory of assets have been filed in accordance with the Insolvency Law, the debtor may propose terms of composition to its creditors. Through composition, the creditors agree that the debtor will satisfy a certain percentage of their claims in exchange for release from its obligations; the process also involves liquidation of the debtor's assets. The composition must be approved by a majority of the creditors in number and value. The debtor will then ask the court to confirm the composition. Once confirmed by the court, the composition becomes binding on the debtor and all creditors, including those which opposed the composition. Following liquidation of the debtor's assets, the court will order the

distribution of the proceeds among the creditors according to the terms of the composition, and the termination of the insolvency proceedings. However, no discharge is granted to an insolvent corporation in insolvency proceedings.

As the Insolvency Law provides that petitioning creditors must be Philippine residents whose claims accrued in the Philippines, foreign creditors not residing in the Philippines cannot institute involuntary proceedings against a Philippine debtor.

From the perspective of secured creditors, insolvency proceedings are preferable to corporate rehabilitation, as secured creditors can choose not to participate in such proceedings and enforce their security instead.

(d) Formal corporate rescue processes

Formal corporate rescue processes in the Philippines take the form of either a suspension of payments under the Insolvency Law or rehabilitation under the Supreme Court's rehabilitation rules. In both cases, the debtor foresees the impossibility of meeting its obligations as they fall due. A suspension of payments is initiated by the debtor, while a petition for corporate rehabilitation may be filed either by the debtor or by creditors with claims representing at least 25 per cent of the total liabilities.

In a suspension of payments, the debtor can postpone the payment of its debts pending approval by the creditors of an agreement for the settlement of those debts. The agreement is proposed by the debtor and must be approved by two-thirds of the creditors with claims representing at least 60 per cent of the total liabilities. The agreement does not need court approval, but the court will rule on its validity if objections to it are raised. If the agreement is upheld by the court, it becomes binding on all creditors that participated in the meeting at which the proposal was considered.

No creditor may sue to collect its claim from the debtor from the time that a suspension of payments is sought and while the proceedings are pending. However, this does not apply to certain creditors, such as those holding legal and contractual mortgages. These secured creditors may institute proceedings to collect their claims from the debtor or enforce their security even if suspension of payments proceedings are pending, unless they consent to the agreement reached at the creditors' meeting.

In corporate rehabilitation, rescue is effected through the implementation of a rehabilitation plan

proposed by the petitioner and approved by the court. A receiver is also nominated by the petitioner and appointed by the court. The receiver does not take over the management of the debtor. His role is rather to monitor closely the debtor's operations while the proceedings are ongoing and to oversee the implementation of the rehabilitation plan.

If the court finds the rehabilitation petition sufficient, it will issue a stay order that prevents, among other things, the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor. Thus, even secured creditors cannot enforce their security while the stay order is effective.

The Supreme Court's rehabilitation rules appear to be debtor friendly, in that the court may approve the rehabilitation plan even where creditors representing a majority of the total liabilities object if, in its opinion, rehabilitation is feasible and the creditors' objections are manifestly unreasonable. In contrast to insolvency cases, where the assignee is elected by the creditors, the receiver in corporate rehabilitation is appointed by the court. The proceedings are time-bound, but the specified timeframes are not always followed and enforced.

Since the 1997 Asian financial crisis, several distressed corporations or their creditors have initiated formal rehabilitation under the Supreme Court's rehabilitation rules. The process is generally viewed as effective, in that over the years its parameters have been adequately defined, thus leaving less room for abuse.

(e) Informal corporate rescue processes

There are no laws or rules that specifically govern informal corporate rescue processes. These rather depend on contractual arrangements between the debtor and its creditors, which are subject to general laws governing obligations and contracts. Under Philippine law, contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided these are not contrary to law, morals, good customs, public order or public policy. The arrangement can take the form of a debt rescheduling, restructuring or other similar agreement, which may involve controls on the debtor's finances, disposition of its assets and the formation of a creditors' committee to oversee the implementation of the agreement or the management of the debtor.

In many cases, and in view of the significant cost and duration of court processes, informal

restructuring is resorted to by both creditors and debtors in pursuing corporate rehabilitation. This route is exhausted before foreclosure or judicial proceedings are considered. A formal corporate rescue is undertaken only where an informal work-out fails.

1.2 What are the formal processes to effect a liquidation of the company's assets?

Please see section 1.1(c) for a discussion of the liquidation of company assets under the Insolvency Law.

Liquidation may also occur in the case of corporate rehabilitation. Under the Supreme Court's rehabilitation rules, the receiver may recommend to the court that the rehabilitation proceedings be terminated and the debtor dissolved if he believes that the debtor's continuation in business is no longer feasible or profitable, or is no longer in the best interests of the stockholders, parties-litigants, creditors or the general public. The court may order the dissolution of the debtor on the basis of this recommendation. Upon dissolution, the debtor is then liquidated. The rehabilitation rules do not specify how this liquidation is to be effected. However, there is a view that liquidation may be effected pursuant to the rules set out in the Corporation Code.

Under the Corporation Code, every corporation whose charter expires by its own limitation or is annulled for forfeiture or otherwise, or whose corporate existence is terminated for other purposes in any other manner, will nevertheless continue as a body corporate for three years after dissolution of the business to enable it to settle its affairs, dispose of its property and distribute its assets, among other things. During these three years the corporation is authorised to convey all of its property to trustees for the benefit of stockholders or members, creditors and other interested parties.

The liquidation of certain corporations is governed by special laws. For instance, liquidation of banks and quasi-banks is governed by the New Central Bank Act. If the receiver appointed by the Monetary Board of *Bangko Sentral ng Pilipinas* (BSP, the Philippine central bank) determines that a bank or quasi-bank cannot be rehabilitated or permitted to resume its business, the Monetary Board will direct the receiver to proceed with liquidation of the bank or quasi-bank with the assistance of the competent regional trial court.

The liquidation of insurance companies is

governed by the Insurance Code. This provides that where the insurance commissioner determines that an insurance company is insolvent or cannot resume business without compromising the safety of its policyholders and creditors, he will, if public interest so requires:

- order the liquidation of that company;
- indicate the manner of liquidation;
- approve the liquidation plan (if any); and
- appoint a liquidator to implement the plan.

1.3 What is the effect on debt collection and the enforcement of security of:

(a) An adjudication of corporate bankruptcy/liquidation?

In both voluntary and involuntary insolvency, once the court has issued a declaration of insolvency, all civil proceedings against the debtor are stayed until the assignee is elected. Once elected, the assignee may replace the debtor in actions against the latter. A declaration of insolvency also prevents the debtor from transferring its property or paying its creditors. However, secured creditors have the option to:

- participate in the distribution of the debtor's assets in the insolvency proceedings;
- enforce their security and not participate in the proceedings; or
- have the secured property appraised and share in the general distribution of the debtor's assets with respect to any amount outstanding.

(b) The commencement of a formal corporate rescue process?

Upon receiving a petition for suspension of payments under the Insolvency Law, the court will issue an order prohibiting the debtor from disposing of its assets except in the ordinary course of business and from making any payments outside its necessary and legitimate expenses. Unsecured creditors cannot sue to collect their claims from the debtor. At the debtor's request, any execution against its assets (except mortgaged assets) is suspended. Secured creditors can continue to enforce their claims and security, unless they consent to the agreement reached at the creditors' meeting held during the suspension of payments proceedings.

In corporate rehabilitation under the Supreme Court's rehabilitation rules, the issue of the stay order:

- prevents enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor;
- prohibits the debtor from selling, encumbering or disposing of its property, except in the ordinary course of business; and
- prohibits the debtor from paying debts outstanding as at the date of filing of the petition.

While secured creditors maintain their security and preference in case of liquidation, they are barred from enforcing their claims or security while the stay order is effective.

(c) The initiation of an informal corporate rescue process?

This depends on the terms of the agreement reached between the debtor and its creditors. Creditors may sometimes be asked to agree to a moratorium for a limited period in order to facilitate the rescue process. They may also agree to postpone the enforcement of their respective securities to give way to the ongoing restructuring.

(d) The initiation of an insolvency or insolvency-related process under any special legislation?

The insurance commissioner may appoint a conservator to take charge of an insurance company's assets, liabilities and management. The conservator has the power to overrule or revoke the actions of the previous management. The insurance commissioner can also appoint a receiver if an insurance company becomes insolvent, or a liquidator in case of liquidation of an insurance company. The receiver or liquidator will take charge of the company's assets and liabilities, and may assume control of its management. In this sense, the collection of debts and enforcement of security may be affected.

For banks and quasi-banks, the receiver appointed by the Monetary Board of the BSP will take possession of and administer the institution's assets and liabilities. The receiver may not, with the exception of administrative expenses, pay or commit any act that involves the transfer or disposition of any asset of the institution. The assets of a bank or quasi-bank under receivership or liquidation are exempt from garnishment, levy, attachment or execution.

1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?

No. The Insolvency Law envisages the commencement of insolvency proceedings in the Philippines. There are no provisions dealing with insolvency proceedings commenced in another jurisdiction and then continued in the Philippines.

Nonetheless, as a matter of general law, if a foreign court has declared a Philippine corporation insolvent, the petitioning creditor must commence an action in the Philippines for enforcement of the judgment. The judgment will be recognised and enforced by the Philippine court unless there is evidence of lack of jurisdiction, lack of notice to the judgment debtor, collusion, fraud or clear mistake of law or fact.

1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?

Generally, directors or officers may incur personal liability if they:

- wilfully and knowingly vote for patently unlawful acts of the debtor;
- are guilty of negligence or bad faith in directing its affairs; or
- acquire any personal or pecuniary interest in conflict with their duties.

In insolvency proceedings, the assignee takes legal title to and possession of all the debtor's assets, except those exempted from execution by law. In this instance, the directors or officers of the debtor are effectively denied the power to continue to trade. If they continue to trade, they risk potential personal liability.

In a suspension of payments, the debtor is prohibited from disposing of its assets and making payments outside the ordinary course of business. If the directors or officers violate this prohibition, they may incur personal liability.

In a rehabilitation, the receiver oversees the debtor's operations and the existing management remains in control. However, the debtor is prohibited from disposing of its assets and making payments outside the ordinary course of business. If the directors or officers violate this prohibition, the receiver may apply for a court order to enforce

it. Violation of such a court order will expose the directors or officers to a possible charge of contempt of court and potential personal liability.

In a rehabilitation, where a management committee has been appointed, the directors or officers may no longer manage or control the debtor; if they continue to trade, they face potential personal liability.

Directors and officers of a bank or quasi-bank who wilfully violate an order or instruction of the Monetary Board of the BSP in connection with the conservatorship, receivership or liquidation of such bank or quasi-bank may be subject to criminal sanctions.

2. What are the advantages and disadvantages of triggering a formal procedure?

Advantages: From the debtor's perspective, a formal procedure suspends the enforcement of claims against it. In a rehabilitation, even secured creditors are prevented from enforcing their security. Uncooperative, dissenting or non-participating creditors are bound by the established or agreed procedures for liquidating or rehabilitating the debtor.

From the creditors' perspective, there is greater assurance that the debtor's assets will be preserved and its funds used properly. The receiver, assignee and conservator can seek compulsory orders from the court.

Disadvantages: From the creditors' perspective, the Supreme Court rehabilitation rules appear to favour the debtor. Secured creditors cannot enforce their security. The receiver is appointed by the court rather than elected by the creditors. The court can approve the rehabilitation plan even where the majority of creditors object. In insolvency or rehabilitation cases, creditors are compelled to abide by the agreed liquidation or rescue process.

From the debtor's perspective, a formal procedure may involve the appointment of a receiver, conservator or management committee that will take control of the company.

Finally, a disadvantage for both debtor and creditors is that a formal procedure involves a lengthy, inconvenient and expensive court process.

3. What are the practical options for out-of-court restructuring?

Perhaps the most common and practical out-of-court restructuring involves an agreement between the debtor and most, if not all, of its creditors. Debts owed to uncooperative creditors are settled, leaving the debtor and its cooperative creditors to work out a mutually acceptable rescue package while the debtor continues operations under its existing management. One common rescue plan is a '*dacion en pago*' arrangement, whereby the debtor's assets are alienated to its creditors to satisfy monetary claims. This arrangement is one of the methods of extinguishing an obligation available under Philippine law.

4. What is the effect on the management of a company of:

4.1 An adjudication of corporate bankruptcy/liquidation?

In insolvency proceedings, the assignee takes possession and control of those assets of the debtor which are not exempt from execution by law. The assignee has the power to:

- recover all assets, debts and claims belonging to the debtor;
- sell the debtor's assets at public auction;
- settle all accounts between the debtor and its creditors; and
- recover from any person unlawful conveyances made by the debtor.

The assignee effectively replaces the existing management.

4.2 The commencement of a formal corporate rescue process?

In a suspension of payments under the Insolvency Law, the debtor's existing management remains in control. However, upon the filing of a petition for a suspension of payments, the court will prohibit the debtor from disposing of its assets except in the ordinary course of business and from making any payments outside the necessary or legitimate expenses of its business.

In corporate rehabilitation under the Supreme Court rehabilitation rules, the receiver does not take over the management and control of the debtor, but rather closely oversees and monitors its operations. However, at the receiver's recommendation, the

court may appoint a management committee to replace the existing management.

4.3 The initiation of an informal corporate rescue process?

The debtor's existing management remains in control. However, the rescue agreement negotiated between the debtor and its creditors may involve changes to the existing management or the appointment of a creditor representative to the board of directors.

4.4 The initiation of an insolvency or insolvency-related process under any special legislation?

The conservator appointed by the insurance commissioner is empowered to take over the management of an illiquid insurance company, and may overrule or revoke the actions of the previous management and board of directors. If the insurance company is insolvent, the receiver or liquidator effectively takes over the management of the company.

The Monetary Board of the BSP may appoint a conservator to take charge of the assets, liabilities and management of a bank or quasi-bank with liquidity problems. The conservator is answerable to the Monetary Board and may overrule the actions of the previous management, except those contracts validly entered into with a third party. If the bank or quasi-bank is insolvent, the receiver will take charge of all assets and liabilities of the institution and take over its management.

5. Roles of key players involved in the restructuring and insolvency process

5.1 Who is responsible for the 'case management' control and administration of a corporate bankruptcy/liquidation, a formal rescue or an informal rescue?

The insolvency court and the assignee have general control over insolvency proceedings. The assignee functions under the supervision of the court.

In a suspension of payments under the Insolvency Law, the court before which the case is pending controls the proceedings.

In corporate rehabilitation under the Supreme Court's rehabilitation rules, the court and the receiver are responsible for case management control and administration. The receiver is considered an officer of the court.

In an informal rescue, the creditors usually designate an administrator or agent from among themselves – often the creditor with the biggest exposure. The administrator or agent ensures that the terms of the restructuring agreement are properly implemented. Creditors can also elect a committee to oversee the implementation of the restructuring agreement. In some cases, the administrator will appoint a monitoring controller for the debtor, who acts on behalf of the creditors.

5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?

In the case of insurance companies, the insurance commissioner and the conservator, receiver or liquidator are responsible for case management control and administration.

In the case of banks, this responsibility rests with the Monetary Board of the BSP and the conservator or receiver.

5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?

In a suspension of payments, the debtor is responsible for preparing the proposed agreement.

In corporate rehabilitation under the Supreme Court rehabilitation rules, the petitioner (ie, the debtor or creditors whose claims represent at least 25 per cent of the total liabilities) submits a proposed rehabilitation plan together with the petition.

In an informal rescue, the terms of the restructuring plan are usually the result of negotiations between the debtor and its creditors.

5.4 Who is responsible for preparing the restructuring plan in a case of corporate insolvency under any special legislation?

After issuing an order for an insurance company to terminate its business and designating a receiver, the insurance commissioner will determine whether the company may be reorganised or otherwise placed in such a condition as allows it to resume business without compromising the safety of its policyholders and creditors. The commissioner will also prescribe the conditions under which such a resumption of business may take place, as well as the timeframe for fulfilling those conditions.

In the case of an insolvent bank or quasi-bank, the receiver will determine whether the institution

may be rehabilitated or otherwise placed in such a condition as will allow it to resume business without compromising the safety of its depositors and creditors and the general public. This determination is subject to the prior approval of the Monetary Board of the BSP.

6. What financial information is available to creditors in a corporate bankruptcy/liquidation, a formal rescue and an informal rescue?

In insolvency and suspension of payments proceedings, the debtor must submit a schedule of its debts and liabilities, together with an inventory containing a description of all its assets, the value of each asset and any encumbrances thereon.

During liquidation, the assignee keeps a regular account of all monies he receives, which may be inspected by all creditors and other interested parties.

In corporate rehabilitation under the Supreme Court's rehabilitation rules, the debtor's petition is accompanied by, among other things:

- an audited financial statement of the debtor;
- interim financial statements as at the end of the month prior to the filing of the petition;
- a schedule of debts and liabilities listing all creditors, the amount and nature of each claim and any security given;
- an inventory of assets stating the value of each asset, among other things;
- a schedule of the debtor's cash flow for the three months immediately preceding the filing of the petition and a detailed schedule of the projected cash flow for the succeeding three months; and
- an affidavit on the debtor's general financial condition.

In an informal rescue, the restructuring or other relevant agreement usually contains covenants relating to financial disclosures.

7. Financial issues

7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?

Companies undergoing formal or informal restructuring often require additional funds to finance working capital requirements. Additional funding may also be used for capital expenditure or expansion, although this is not usually the case as

most distressed firms are under-utilised in terms of capacity. In rare cases of capital expenditure programmes, the funds are usually used for the modernisation of equipment or facilities, or for the development of new product lines.

7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?

With regards to the settlement of claims in insolvency or liquidation proceedings, the Civil Code sets out a list of preferred claims and liens with respect to specific movable property of the debtor, and a list of preferred claims and liens with respect to specific immovable property of the debtor.

With the exception of claims for taxes and government assessments on such assets, these claims enjoy no preference over each other. After payment of such taxes and assessments, the creditors share *pro rata* in the proceeds of sale of the specific assets in respect of which the claim is held.

The Civil Code also sets out a list of preferred claims with respect to all other assets of the debtor. Claims to be settled from the proceeds of sale of these 'free' assets are satisfied in the order specified in this list. Creditors in a higher class exclude those which they precede. However, this order has been modified by an amendment to the Labour Code which affords claims of the debtor's workers for unpaid wages and other benefits the highest priority in the satisfaction of claims.

7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?

Under the Insolvency Law, if a debtor which is insolvent or threatened with insolvency makes a payment, pledge, mortgage, conveyance, sale, assignment or transfer of its assets in the 30 days prior to the filing of a petition for insolvency with the intent to give preference to any creditor or person with a claim against the debtor, or under such other circumstances as would make that payment, pledge, mortgage, conveyance, sale, assignment or transfer a fraudulent preference or fraudulent transfer, the transaction is considered void and the assignee may recover the payment or asset, or the value thereof.

However, a payment, pledge, mortgage, conveyance, sale, assignment or transfer will not be considered fraudulent and void, even if it took

place within this 30-day period, if it was effected in good faith and for valuable pecuniary consideration.

In corporation rehabilitation, the stay order issued by the court prohibits the debtor from paying liabilities outstanding as at the date of filing of the petition and from selling, encumbering, transferring or otherwise disposing of its assets, except in the ordinary course of business. The receiver can prevent any such prohibited transaction, encumbrance or transfer, and may seek a court order directing the recovery of such payment or the asset so encumbered or transferred.

7.4 What is the position of both unsecured and secured creditors that vote against, do not agree with or do not consent to either a formal or informal rescue plan?

In a suspension of payments, if the creditors' meeting decides to approve the debtor's proposal, dissenting creditors may object within 10 days of the meeting. The court will hear and rule on the objection; its decision is final. Creditors holding legal or contractual mortgages may refrain from attending the meeting and can enforce their security independently of any agreement reached at the meeting. These creditors are not bound by any such agreement unless they join in the voting, in which case they will be bound in the same manner as the other creditors irrespective of whether they voted in favour of the agreement.

Under the Supreme Court's rehabilitation rules, the court-approved rehabilitation plan is binding on all affected parties, including all creditors, irrespective of whether they participated in the proceedings or opposed the plan and whether their claims are included in the schedule of debts and liabilities.

In an informal rescue, the different classes of creditors which are party to the restructuring agreement are treated according to the terms of the agreement. Creditors which are not party to the agreement are not bound by its terms.

7.5 What actions can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?

In a suspension of payments, a dissenting creditor can object to the agreement reached at the creditors' meeting. If the court rejects this objection and upholds the agreement, the creditor can appeal the court's decision before the competent appellate

court. Creditors may also move for a court order to enforce the agreement. If the debtor fails to perform the agreement, all rights which the creditors held against the debtor before the agreement was reached will revert to them.

In a corporate rehabilitation, the Supreme Court's rehabilitation rules provide that the court can revoke the approval of the rehabilitation plan if such approval was obtained through fraud. An approved plan may also be amended by order of the court if, in its opinion, this is necessary to achieve the desired goals or targets set out in the plan. From time to time, a dissatisfied creditor can also file a motion in court to address its concerns, such as a motion for the court to terminate, modify or set conditions for the continuance of the stay order.

In insolvency proceedings, the court may at any time, at the motion of two or more creditors, require the assignee to render account of all receipts and payments. Should the assignee refuse or neglect to render the accounts, or neglect or mismanage the debtor's estate, the court will immediately discharge the assignee from his post and appoint another in his place. A court's confirmation of the composition reached between the debtor and its creditors may be set aside upon the application of a creditor on the grounds that such confirmation was obtained through fraud. A dissatisfied creditor may also appeal the orders of the insolvency court before the competent appellate court.

8. General

8.1 Can the insolvency regime be described as systematic and efficient for:

(a) The liquidation of businesses incapable of being restructured?

(b) The restructuring of debt?

Both the Insolvency Law and the Supreme Court's rehabilitation rules, applied together with other relevant laws, may be said to be systematic, in that they provide specific rules and procedures for liquidation of the assets or business of the debtor, or for its rehabilitation. The same holds true of the liquidation and insolvency-related rules for banks, quasi-banks and insurance companies.

However, court proceedings in the Philippines are invariably protracted, inconvenient to all parties and very costly. Court dockets are clogged and few courts have the expertise to handle insolvency or rehabilitation cases (particularly the

related financial and business issues). In this sense, the insolvency regime may be said to be inefficient.

8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?

The fact that an insolvent corporation is not discharged from its obligations, coupled with the limited liability of corporate entities, serves a disincentive for the debtor’s management and/or stockholders to institute and/or cooperate in insolvency proceedings. The stockholders will not be held liable beyond their equity in the corporation, and may simply opt to create a new corporation instead of spending time and effort on insolvency proceedings.

Some contend that certain provisions of the Supreme Court’s rehabilitation rules are somewhat vague and that the rehabilitation regime is debtor friendly. In exercising its cram-down powers, the court may approve a rehabilitation plan even where the creditors object. Since creditors may bring motions for relief before the court even while the rehabilitation plan is being implemented, opposing creditors may unduly prolong the rehabilitation process. The problems inherent in court proceedings referred to in section 8.1 are also impediments to a systematic and efficient insolvency regime.

In both formal and informal rescues, there is a failure to appreciate the value of engaging the services of independent and professional consultants to assist distressed companies in the rehabilitation or restructuring process. With the exception of large corporations, many parties try to develop rescue plans using in-house resources.

8.3 Has the insolvency regime been reformed in the last two years? If so:

(a) What are the reforms?

(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?

The insolvency regime has not been reformed in the last two years.

8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?

A draft Corporate Recovery Act is currently pending before the Philippine Congress, which provides for and consolidates the rules and procedures applicable to corporate rehabilitation and insolvency and suspension of payments proceedings affecting corporations and partnerships.

8.5 Is statistical information on insolvency cases, and corporate insolvency published? If so, how? Is it easily and freely accessible?

Occasionally, high-profile corporate rehabilitation cases are reported in the newspapers. However, statistical information on insolvency cases and corporate insolvency or rehabilitation is not formally or officially published. If a case reaches the Supreme Court, there will be official publication of the decision. Such publications are easily accessible, and certain decisions are also posted on the Supreme Court’s website.

8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases (formal and informal)?

As regards rescues, an urgent concern is the immediate infusion of money to keep the debtor afloat. Granting payment priority to credit extended while rehabilitation proceedings are ongoing may make it easier to attract such funding.

As regards bankruptcy, an urgent concern is the immediate liquidation of the debtor’s assets. A definite period from the declaration of insolvency, coupled with a defined minimum price for the assets, such as a certain percentage above the historical cost, would help to expedite the liquidation process.

While judges are not formally trained to handle insolvency or rehabilitation cases, there are specially designated branches of the courts that hear rehabilitation cases. It is expected that the continued exposure to such cases by the judges sitting in those courts, together with special lectures given to these judges, will lead to a specialised and more efficient handling of rehabilitation proceedings.