

[REPUBLIC ACT NO. 10142, July 18, 2010]

AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS

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

CHAPTER I

GENERAL PROVISIONS

SECTION 1. *Title.* — This Act shall be known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010".

SEC. 2. *Declaration of Policy.* — It is the policy of the State to encourage debtors, both juridical and natural persons, and their creditors to collectively and realistically resolve and adjust competing claims and property rights. In furtherance thereof, the State shall ensure a timely, fair, transparent, effective and efficient rehabilitation or liquidation of debtors. The rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilities a speedy and orderly liquidation of these debtor's assets and the settlement of their obligations.

SEC. 3. *Nature of Proceedings.* — The proceedings under this Act shall be *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 the rules of procedure to be promulgated by the Supreme Court.

The proceedings shall be conducted in a summary and non-adversarial manner consistent with the declared policies of this Act and in accordance with the rules of procedure that the Supreme Court may promulgate.

SEC. 4. *Definition of Terms.* — As used in this Act, the term:

(a) *Administrative expenses* shall refer to those reasonable and necessary expenses:

1. incurred or arising from the filing of a petition under the provisions of this Act;
2. arising from, or in connection with, the conduct of the proceedings under this Act, including those incurred for the rehabilitation or liquidation of the debtor;
3. incurred in the ordinary course of business of the debtor after the commencement date;
4. for the payment of new obligations obtained after the commencement date to finance the rehabilitation of the debtor;
5. incurred for the fees of the rehabilitation receiver or liquidator and of the professionals engaged by them; and
6. that are otherwise authorized or mandated under this Act or such other expenses as may be allowed by the Supreme Court in its rules.

(b) *Affiliate* shall refer to a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation.

(c) *Claim* shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to; (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided*, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities.

(d) *Commencement date* shall refer to the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings.

(e) *Commencement Order* shall refer to the order issued by the court under Section 16 of this Act.

(f) *Control* shall refer to 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 or affiliates, 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:

1. over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;

2. to direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
3. to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
4. to cast the majority votes at meetings of the board of directors or equivalent governing body.

(g) *Court* shall refer to the court designated by the Supreme Court to hear and determine, at the first instance, the cases brought under this Act.

(h) *Creditor* shall refer to a natural or juridical person which has a claim against the debtor that arose on or before the commencement date.

(i) *Date of liquidation* shall refer to the date on which the court issues the Liquidation Order.

(j) *Days* shall refer to calendar days unless otherwise specifically stated in this Act.

(k) *Debtor* shall refer to, unless specifically excluded by a provision of this Act, a sole proprietorship duly registered with the Department of Trade and Industry (DTI), a partnership duly registered with the Securities and Exchange Commission (SEC), a corporation duly organized and existing under Philippine laws, or an individual debtor who has become insolvent as defined herein.

(l) *Encumbered* property shall refer to real or personal property of the debtor upon which a lien attaches.

(m) *General unsecured creditor* shall refer to a creditor whose claim or a portion thereof is neither secured, preferred nor subordinated under this Act.

(n) *Group of debtors* shall refer to and can cover only: (1) corporations that are financially related to one another as parent corporations, subsidiaries or affiliates; (2) partnerships that are owned more than fifty percent (50%) by the same person; and (3) single proprietorships that are owned by the same person. When the petition covers a group of debtors, all reference under these rules to debtor shall include and apply to the group of debtors.

(o) *Individual debtor* shall refer to a natural person who is a resident and citizen of the Philippines that has become insolvent as defined herein.

(p) *Insolvent* shall refer to the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.

(q) *Insolvent debtor's estate* shall refer to the estate of the insolvent debtor, which includes all the property and assets of the debtor as of

commencement date, plus the property and assets acquired by the rehabilitation receiver or liquidator after that date, as well as all other property and assets in which the debtor has an ownership interest, whether or not these property and assets are in the debtor's possession as of commencement date: *Provided*, That trust assets and bailment, and other property and assets of a third party that are in the possession of the debtor as of commencement date, are excluded therefrom.

(r) *Involuntary proceedings* shall refer to proceedings initiated by creditors.

(s) *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.

(t) *Lien* shall refer to a statutory or contractual claim or judicial charge on real or personal property that legality entities a creditor to resort to said property for payment of the claim or debt secured by such lien.

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

(v) *Liquidation Order* shall refer to the Order issued by the court under Section 112 of this Act.

(w) *Liquidator* shall refer to the natural person or juridical entity appointed as such by the court and entrusted with such powers and duties as set forth in this Act: *Provided*, That, if the liquidator is a juridical entity, it must designated a natural person who possesses all the qualifications and none of the disqualifications as its representative, it being understood that the juridical entity and the representative are solidarity liable for all obligations and responsibilities of the liquidator.

(x) *Officer* shall refer to a natural person holding a management position described in or contemplated by a juridical entity's articles of incorporation, bylaws or equivalent documents, except for the corporate secretary, the assistant corporate secretary and the external auditor.

(y) *Ordinary course of business* shall refer to transactions in the pursuit of the individual debtor's or debtor's business operations prior to rehabilitation or insolvency proceedings and on ordinary business terms.

(z) *Ownership interest* shall refer to the ownership interest of third parties in property held by the debtor, including those covered by trust receipts or assignments of receivables.

(aa) *Parent* shall refer to a corporation which has control over another corporation either directly or indirectly through one or more intermediaries.

(bb) *Party to the proceedings* shall refer to the debtor, a creditor, the unsecured creditors' committee, a stakeholder, a party with an ownership interest in property held by the debtor, a secured creditor, the

rehabilitation receiver, liquidator or any other juridical or natural person who stands to be benefited or injured by the outcome of the proceedings and whose notice of appearance is accepted by the court.

(cc) *Possessory lien* shall refer to a lien on property, the possession of which has been transferred to a creditor or a representative or agent thereof.

(dd) *Proceedings* shall refer to judicial proceedings commenced by the court's acceptance of a petition filed under this Act.

(ee) *Property of others* shall refer to property held by the debtor in which other persons have an ownership interest.

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

(gg) *Rehabilitation* shall refer to the restoration of the debtor to a condition 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 debtor continues as a going concern than if it is immediately liquidated.

(hh) *Rehabilitation receiver* shall refer to the person or persons, natural or juridical, appointed as such by the court pursuant to this Act and which shall be entrusted with such powers and duties as set forth herein.

(ii) *Rehabilitation Plan* shall refer to a plan by which the financial well-being and viability of an insolvent debtor can be restored using various means including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of new business entity as prescribed in Section 62 hereof, or other similar arrangements as may be approved by the court or creditors.

(jj) *Secured claim* shall refer to a claim that is secured by a lien.

(kk) *Secured creditor* shall refer to a creditor with a secured claim.

(ll) *Secured party* shall refer to a secured creditor or the agent or representative of such secured creditor.

(mm) *Securities market participant* shall refer to a broker dealer, underwriter, transfer agent or other juridical persons transacting securities in the capital market.

(nn) *Stakeholder* shall refer, in addition to a holder of shares of a corporation, to a member of a nonstock corporation or association or a partner in a partnership.