



2008 PHILIPPINE RULES ON CORPORATE REHABILITATION

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Brief History of Philippine Legal Framework

- **1909**
 - Insolvency Law passed – secured creditors not affected
- **1981**
 - Presidential Decree 902-A gives SEC jurisdiction over suspension of payments cases filed by corporations, partnerships or associations.
 - Creates the remedy of “rehabilitation”
- **2000**
 - January 15, 2000 – SEC Rules came into effect.



Brief History of Philippine Legal Framework

- 8 August 2000 – The Securities Regulation Code (R.A. 8799) came into effect.
 - Transferred jurisdiction over intra-corporate disputes and rehabilitation cases to the Regional Trial Courts

- 15 December 2000
 - Interim Rules of Procedure on Corporate Rehabilitation (“Interim Rules”) issued by the Philippine Supreme Court (SC) went into effect.

- 23 December 2002 - Republic Act No. 9182 – Special Purpose Vehicles Act
 - Non-performing assets of financial institutions
 - Bank NPLs down from 16.16.4% in 1997 to 3.7% in May, 2009



Brief History of Philippine Legal Framework

- 2008
 - December 2, 2008 – SC approved 2008 Rules of Procedure on Corporate Rehabilitation (2008)
- 2009
 - January 16, 2009 - 2008 Rules came into effect.



Salient Changes Introduced by 2008 Rules

⦿ Stay Order

- ⦿ Directs payment in full of all administrative expenses incurred after the issuance of the stay order (Sec. 7, Rule 3)
 - Definition of “administrative expenses” now includes reasonable and necessary expenses incurred in connection with the filing of the petition e.g. attorney’s fees, financial advisor’s fees (Sec. 1, Rule 2)
- ⦿ Does not cover claims against letters of credit and similar security arrangements (Sec. 1, Rule 3)
 - Adopts *MWSS v. Daway* (G.R. No. 160732, 21 June 2004)
- ⦿ Does not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehab



Salient Changes Introduced by 2008 Rules

- ◎ **New Money Clause - post petition financing**
 - ◎ Stay order directs the payment of new loans or other forms of credit accommodations (to the debtor after filing of petition)

- ◎ **Issuance of stay order does not affect the right to commence action**
 - To prevent prescription from creeping in (Sec.9, Rule 3)



Salient Changes Introduced by 2008 Rules

- Equitable treatment of creditors
 - Proposed rehabilitation plan must give due regard to the interests of secured creditors such as, but not limited, to the *non-impairment of their security liens or interests* (Sec. 18, Rule 3).
 - Repayment Period
 - If rehab plan extends the period for repayment, new period should not extend beyond 15 years (Sec.19, Rule 3).
 - In approving the rehab plan, the court shall ensure that the rights of the secured creditors are **not** impaired (Sec.11, Rule 4).



Salient Changes Introduced by 2008 Rules

- **Global Filing**
 - New rules expressly authorize a group of companies to jointly file a petition for rehab when one or more of its constituent firms foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition of the other member firms of the group (Sec.1, Rule 4).
 - Group of Companies refers to corporations that are financially related to one another as parent, subsidiaries and affiliates (Sec.1, Rule 2).



Salient Changes Introduced by 2008 Rules

- ⦿ **Override Clause** - court may approve plan if creditors' opposition is “manifestly unreasonable”
 - Rehab plan complies with requirements specified in Sec.18 of Rule 3
 - Rehab 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 6-month period from the date of filing of the petition
 - Rehab receiver has recommended approval of the plan



Salient Changes Introduced by 2008 Rules

- **Period to Decide Petition**
 - The court shall decide the petition within 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 (Sec.12, Rule 4).



Salient Changes Introduced by 2008 Rules

- ⦿ Pre-negotiated rehab plan An entirely new rule not found in the 2001 Rules on Corporate Rehab designed specifically to encourage informal workouts and speed up the rehab process. It is also intended to avoid tyranny of the minority.
- ⦿ Required Majority
 - ⦿ Petition shall be supported by an affidavit showing written approval of creditors holding at least 2/3 of the total liabilities of the debtor, including secured creditors holding 50 pct of total secured claims and unsecured creditors holding more than 50 pct of total unsecured claims.



Salient Changes Introduced by 2008 Rules

- Limited Objections
 - Petition or rehab plan contain material omissions or are materially false.
 - The terms of rehab are unattainable.
 - An approval or endorsement of creditors required under Sec.1 of this Rule has not been obtained.
- Period to Approve Plan
 - 120 days from filing; if no action, deemed approved



Salient Changes Introduced by 2008 Rules

▫ Recognition of Foreign Proceedings

• Applies where:

- Assistance is sought in the Philippines in connection with a foreign proceeding
- Assistance is sought in a foreign court in connection with a Philippine proceeding
- Foreign and local proceedings are simultaneously taking place.



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