

## Global Restructuring & Insolvency Guide

### Philippines

#### Overview and Introduction, Applicable Legislation

There are several remedies available to a financially distressed individual or juridical person: a financially distressed individual may apply for suspension of payments or insolvency (bankruptcy)<sup>1</sup>, while a financially distressed juridical person may apply for (i) court-supervised rehabilitation, (ii) pre-negotiated rehabilitation or (iii) an out-of-court restructuring agreement. The applicable laws and regulations are the Civil Code of the Philippines<sup>2</sup> (the “**Civil Code**”), the Financial Rehabilitation and Insolvency Act<sup>3</sup> (the “**FRIA**”), Presidential Decree 902-A (“**PD 902-A**”)<sup>4</sup>, and the Financial Rehabilitation Rules of Procedure (the “**FR Rules**”).<sup>5</sup> The particular relief sought will determine the type of proceeding.

The FRIA provides for a more comprehensive framework for rehabilitation and liquidation of debtors, whether corporate or individual. Moreover, the FRIA has made available the benefits of rehabilitation proceedings to partnerships, individuals and smaller businesses. However, banks, insurance companies and pre-need companies (i.e. those that sell contracts which provide for payments at the time of actual need, such as pension and education plans), and national and local government agencies or units are not covered by the FRIA.

Each of the above remedies is discussed in more detail below.

#### Proceedings for Solvent Debtors

##### Suspension of Payments

An individual debtor who possesses sufficient property to cover all of his debts but may not be able to meet them as they fall due may file a petition with a Philippine Regional Trial Court designated as a special commercial court<sup>6</sup> (the “**court**”), to be subject to suspension of payments. The verified petition must be filed with the court where the debtor has resided for at least six months prior to the filing of the petition.

##### *Action on the Petition for Suspension of Payments*

If the court finds the petition for suspension of payments sufficient in form and substance, it will issue an order:

- Calling a meeting of all the creditors named in the schedule of debts and liabilities (“**creditors’ meeting**”);
- Directing such creditors to prepare and present written evidence of their claims before the creditors’ meeting;
- Directing the publication of the order in a newspaper of general circulation;

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<sup>1</sup> Philippine law makes no distinction between bankruptcy and insolvency.

<sup>2</sup> Republic Act No 386.

<sup>3</sup> Republic Act No 10142.

<sup>4</sup> Reorganisation of the Securities and Exchange Commission with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President. After the promulgation of Republic Act 8799 (the “Securities Regulation Code”), jurisdiction over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments was transferred from the Securities and Exchange Commission to the Regional Trial Court. The Securities and Exchange Commission, however, retained jurisdiction over pending suspension of payments and rehabilitation cases filed as of 30 June 2000 until final disposition of such cases.

<sup>5</sup> Supreme Court Administrative Matter No 12-12-11.

<sup>6</sup> Supreme Court OCA Circular No. 11-2016, amending Administrative Matter No. 03-03-03-SC..

- Directing the clerk of court to cause the sending of a copy of the order to all creditors named in the schedule of debts and liabilities;
- Forbidding the individual debtor from selling, transferring, encumbering or disposing in any manner his property, except property used in the ordinary operations of commerce or of the industry in which the petitioning individual debtor is engaged, so long as the proceedings relative to the suspension of payments are pending;
- Prohibiting the individual debtor from making any payment outside of the necessary or legitimate expenses of his business or industry, so long as the proceedings relative to the suspension of payments are pending; and
- Appointing a commissioner to preside over the creditors' meeting.

### ***Actions Suspended***

Upon a motion filed by the individual debtor, the court may issue an order suspending any pending execution against the individual debtor, except that properties held as security by secured creditors will not be the subject of such suspension order.

A creditor may not sue or institute proceedings to collect his claim from the debtor from the time of the filing of the petition for suspension of payments and for as long as proceedings remain pending except:

- Those creditors having claims for personal labour, maintenance, or expense related to the last illness and funeral of the debtor's wife or children incurred in the 60 days immediately prior to the filing of the petition; and
- Secured creditors.

### ***Agreement for Suspension of Payments***

The petition for suspension of payments must include a statement of the debtor's assets, a schedule of the debtor's liabilities, and the proposed agreement with the creditors for the suspension of payments. The presence of creditors holding claims amounting to at least three-fifths of the liabilities is necessary for holding the creditors' meeting. The proposed agreement must be approved by two-thirds of the creditors representing at least three-fifths of the debtor's total liabilities. The proposed agreement will be deemed rejected if the number of creditors required for holding a creditors' meeting is not attained, or if the required vote is not achieved. In such instances, the proceeding will be terminated and the creditors may enforce their claims.

If the required vote is achieved without any objection from the creditors, or the decision of the majority of the creditors to approve the proposed agreement or any amendment thereof made during the creditors' meeting is upheld by the court, the court will issue an order that the proposed agreement be carried out, and the agreement is binding on all creditors that have been properly summoned and included in the schedule of debts and liabilities. However, the agreement is not binding upon those creditors having claims for personal labour, maintenance, or expense related to the last illness and funeral of the debtor's wife or children incurred in the 60 days immediately prior to the filing of the petition, as well as upon secured creditors.

If the required vote is achieved but there is an objection from any of the creditors, the court will conduct a hearing on the objection. If the objection is found to be meritorious, the proceeding will terminate. If the objection is found to be unmeritorious, the court will proceed as though no objection had been made.

The amount of the debts of the debtor is not affected by a suspension of payments. However, the payment for such debts is delayed.

## ***Objections to the Debtor's Proposed Agreement***

The possible grounds for objecting to the proposed agreement are:

- Defects in the call for the meeting of the creditors, in the holding thereof, and in the deliberations thereat, which prejudice the rights of the creditors;
- Fraudulent connivance between one or more creditors and the debtor to vote in favour of the proposed agreement; and
- Fraudulent conveyance of claims for the purpose of obtaining the required majority.

If the debtor fails wholly or in part to perform the court-approved agreement, the rights which the creditors had against the debtor before the agreement shall re-vest in them. In such case the individual debtor may be made subject to the insolvency proceedings in the manner established by the FRIA.

## **Court-Supervised Rehabilitation**

### **Types of Proceedings**

#### ***Voluntary Proceedings***

An insolvent debtor (i.e. a sole proprietorship, partnership, or corporation that is generally unable to pay its debts as they fall due in the ordinary course of business or has liabilities that are greater than its assets) may initiate voluntary proceedings under the FRIA by filing a petition for rehabilitation with the Philippine Regional Trial Court which has jurisdiction over the principal office of the debtor, as specified in its articles of incorporation or partnership or, in cases of sole proprietorships, in its registration papers with the Department of Trade and Industry. A group of debtors may also jointly file a petition for rehabilitation when one or more of its members foresee the impossibility of meeting debts as they fall due, and the financial distress would likely adversely affect the financial condition or operations of the other members of the group or the participation of the other members of the group is essential under the terms and conditions of the proposed rehabilitation plan.

#### ***Involuntary Proceedings***

Any creditor, or group of creditors, with a claim of, or the aggregate of whose claims is, at least PHP 1,000,000 (approximately USD 21,267.78 at an exchange rate of USD 1 = PHP 47.02), or at least 25% of the subscribed capital stock or partners' contributions, whichever is higher, may initiate involuntary proceedings against the debtor by filing a petition for rehabilitation with the court if:

- There is no genuine issue of fact or law with respect to the claim(s) of the petitioner(s), and either the due and demandable payments thereon have not been made for at least 60 days or the debtor has failed generally to meet its liabilities as they fall due; or
- A creditor, other than the petitioner(s), has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.

#### ***Action on the Petition and Commencement of Proceedings***

If the court finds the petition sufficient in form and substance, it will, not later than five working days from the filing of the petition, issue a Commencement Order which, among other things: (i) declares that the debtor is under rehabilitation; (ii) appoints a Rehabilitation Receiver; (iii) prohibits the debtor from selling, encumbering, transferring, or in any manner disposing of, any of its properties, except in the ordinary course of business; (iv) prohibits the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (v) prohibits the debtor's suppliers of goods or services from withholding the 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 Commencement Order; (vi) authorises the payment of administrative expenses as they become due; (vii) suspends all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor; (viii) suspends all actions to enforce any judgment, attachment or other provisional

remedies against the debtor;<sup>7</sup> (ix) sets an initial hearing on the petition; and (x) directs all creditors and interested parties to file their claims at least five days before the initial hearing.

If, within the same period, the court finds the petition deficient in form or substance, it may, in its discretion, give the petitioner/s not more than five working days from receipt of the notice of the order of the court to amend or supplement the petition, or to submit such documents as may be necessary to put the petition in proper order. If the deficiency is not corrected within the extended five-day period, the court must dismiss the petition.

Upon issuance of the Commencement Order and until the approval of the Rehabilitation Plan or dismissal of the petition, whichever is earlier, the imposition of all taxes and fees, including penalties, interests and charges thereof, due to the national government or to local government units will be considered waived, in furtherance of the objectives of rehabilitation.

Under the FRIA, the “commencement date” refers to the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for both voluntary and involuntary proceedings.

### **Effectivity and Duration of Commencement Order**

Unless lifted by the court, or where the rehabilitation plan is seasonably confirmed or approved, or the rehabilitation proceedings are ordered terminated by the court, the Commencement Order, including the stay of actions and proceedings for the enforcement of claims, will remain effective for the duration of the rehabilitation proceedings for as long as there is a substantial likelihood that the debtor will be successfully rehabilitated. However, the order suspending any pending execution against the individual debtor lapses after three months have passed without a proposed agreement being accepted by the creditors, or as soon as such agreement is denied.

### **Court Proceedings**

If, after the initial hearing on the petition for rehabilitation, the court is satisfied that there is merit in the petition, it will refer the petition to the Rehabilitation Receiver. The Rehabilitation Receiver will evaluate the rehabilitation plan and submit his recommendations to the court within a period of not more than 90 days. However, the court may also refer any dispute relating to the Rehabilitation Plan or the rehabilitation proceedings to arbitration or other modes of dispute resolution.

If the petition is dismissed because of a finding that: (i) the debtor is not insolvent; (ii) the petition is a sham filing intended only to delay the enforcement of the rights of the creditor(s) or of any group of creditors; (iii) the petition, the Rehabilitation Plan and the attachments thereto contain materially false or misleading statements; or (iv) the debtor has committed acts of misrepresentation or in fraud of its creditor(s) or a group of creditors, then the court may order the petitioner to pay damages to any creditor or to the debtor, as the case may be, who may have been injured by the filing of the petition, to the extent of any such injury.

The court may also convert the proceedings into one for the liquidation of the debtor upon a finding that: (a) the debtor is insolvent; (b) there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the rules promulgated by the Supreme Court; and (c) there is a failure of rehabilitation.

The court may also convert the proceedings into liquidation: (i) upon motion of the debtor (judicial debtor) at any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings; (ii) when no rehabilitation plan is confirmed within one year from the date of filing of the petition to confirm a rehabilitation plan; (iii) in cases of termination of proceedings, due to failure of rehabilitation or dismissal of petition for reasons other than technical grounds; or (iv) upon verified motion of three or more creditors whose claims total at least either PHP 1,000,000 (approximately

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<sup>7</sup> The issuance of a Stay or Suspension Order also prohibits the debtor from selling, encumbering, transferring or disposing of any of its properties except in the ordinary course of business and from making any payment of its outstanding liabilities as of commencement date. However, it does not affect the right to commence actions or proceedings in order to preserve *ad cautelam* a claim against the debtor and to toll the running of the prescriptive period to file the claim.

USD 21,2267.78 at an exchange rate of USD 1 = PHP 47.02) or constitute at least 25% of the subscribed capital or partners' contributions, whichever is higher.

### **Management of the Juridical Debtor**

Unless otherwise ordered by the court upon motion of any interested party, the management of the juridical debtor will remain with the existing management subject to the applicable laws and agreements, if any, on the election or appointment of directors, managers or managing partner. However, all disbursements, payments or sale, disposal, assignment, transfer or encumbrance of property, or any other act affecting title to or interests in property, will be subject to the approval of the rehabilitation receiver and/or the court.

### **Clawback Provisions**

The court may, upon motion and after notice and hearing, rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbering thereof by the debtor or its agents or representatives after the commencement date which are not in the ordinary course of the business of the debtor.

The court may also rescind or declare as null and void any transaction that occurred prior to the commencement date and was entered into by the debtor or involved its funds or assets, on the ground that the same was executed with intent to defraud a creditor(s) or constitutes undue preference of creditors.

### **Other Salient Provisions of the FRIA**

- Under the FRIA, obligations incurred after the commencement date to finance the rehabilitation of the debtor are considered administrative expenses. Thus, these obligations can be paid in the ordinary course of business during the rehabilitation period and enjoy priority in preference of claims. This provision improves creditor rights for creditors coming in during rehabilitation. By way of comparison, under the Rules on Corporate Rehabilitation, a Stay Order directs the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor only with prior court approval.
- The FRIA also provides tax exemption of forgiven or reduced obligations.
- The compensation of employees required to carry on the business is considered an administrative expense. Claims for salary and separation pay for work performed after the commencement date are also an administrative expense. However, claims of separation pay for months worked prior to the commencement date are considered pre-commencement claims.
- The FRIA provides further clarifications on the treatment of contracts. Under the FRIA – unless cancelled by virtue of a final judgment of a court of competent jurisdiction issued prior to the issuance of the Commencement Order, or at any time thereafter by the court before which the rehabilitation proceedings are pending – all valid and subsisting contracts of the debtor with creditors and other third parties as at the commencement date remain in force, provided that within 90 days following the issuance of the Commencement Order, the debtor, with the written consent of the Rehabilitation Receiver, notifies in writing each contractual counterparty whether or not it is confirming the particular contract. Contractual obligations of the debtor arising or performed during this period, and afterwards for confirmed contracts, are considered administrative expenses. Contracts not confirmed within the required deadline are considered terminated. Claims for actual damages, if any, arising as a result of the election to terminate a contract are considered pre-commencement claims against the debtor, to be filed with the rehabilitation court as a separate claim. The claim will be considered in the rehabilitation plan with the other claims against the debtor. The provisions of the FRIA do not prevent the cancellation or termination of any contract of the debtor for any ground provided by law.

## Rehabilitation Plan

### ***Confirmation of the Rehabilitation Plan***

If no objections to the Rehabilitation Plan are filed within 20 days from receipt of notice from the court that a Rehabilitation Plan has been submitted to the court, or if the objections filed are found by the court to be lacking in merit or have been cured or have been resolved pursuant to an order to cure issued by the court, then the court must issue an order confirming such Rehabilitation Plan. The court may confirm the Rehabilitation Plan notwithstanding the existence of unresolved disputes over claims if the Rehabilitation Plan has made adequate provisions for paying these claims.

### ***Effect of Confirmation of the Rehabilitation Plan***

- The confirmed Rehabilitation Plan will be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not they participated in the proceedings, whether or not their claims have been included in the schedule and even if they opposed the Rehabilitation Plan;
- The debtor must comply with the provisions of the Rehabilitation Plan and take all actions necessary to carry them out;
- Payments are made to the creditors in accordance with the provisions of the Rehabilitation Plan;
- Contracts and other arrangements between the debtor and its creditors will be deemed as continuing in application but only to the extent that they do not conflict with the provisions of the Rehabilitation Plan;
- Any compromise on amounts or rescheduling of timing of payments by the debtor will be binding on the creditors regardless of the successful implementation of the Rehabilitation Plan; and
- Claims arising after approval of the Rehabilitation Plan that are otherwise not treated by the Rehabilitation Plan are not subject to any Suspension Order.

### ***Pre-Negotiated Rehabilitation***

An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a pre-negotiated Rehabilitation Plan, supported by an affidavit showing the written endorsement or approval of creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50% of the total secured claims of the debtor and unsecured creditors holding more than 50% of the total unsecured claims of the debtor.

## **Out-of-Court or Informal Restructuring Agreements and Rehabilitation Plans**

In addition to the existing court-supervised and pre-negotiated rehabilitation, the FRIA introduces out-of-court rehabilitation or informal restructuring.

### **Minimum Requirements**

The following are the minimum requirements for an out-of-court or informal restructuring/work-out agreement or Rehabilitation Plan ("**OCRA**") under the FRIA:

- The debtor must agree to the out-of-court or informal restructuring/work-out agreement or Rehabilitation Plan;
- It must be approved by creditors representing at least 67% of the secured obligations of the debtor;
- It must be approved by creditors representing at least 75% of the unsecured obligations of the debtor; and
- It must be approved by creditors holding at least 85% of the total liabilities, secured and unsecured, of the debtor.

A standstill period, not exceeding 120 days, may be agreed upon by the parties pending negotiation and finalisation of the out-of-court or informal restructuring. The standstill period is effective and enforceable not only against the contracting parties but also against the other creditors, provided that the necessary creditor approval on the standstill period is obtained and notice thereof is published in a newspaper of general circulation once a week for two consecutive weeks.

### **Cram-down Effect**

A restructuring/work-out agreement or Rehabilitation Plan that is approved pursuant to an informal workout framework will have the same legal effect as a court-approved Rehabilitation Plan.

Any court action or other proceeding arising from, or relating to, the out-of-court or informal restructuring shall not stay its implementation, unless the relevant party is able to secure a temporary restraining order or injunctive relief from the Court of Appeals in an original action for a petition for *certiorari* under Rule 65 of the Philippine Rules of Court.

Regional Trial Courts, however, will have jurisdiction over a petition for court assistance to execute or implement the standstill agreement or the OCRA or a petition for annulment of the standstill agreement or the OCRA.

### **Liquidation Proceedings (Individuals or Corporations)**

In liquidation proceedings, the basic premise is that the debtor does not have enough assets/property to cover his obligations. Liquidation proceedings may be voluntary or involuntary.

#### **Types of Proceedings**

##### ***Voluntary Liquidation***

An insolvent debtor may apply for liquidation by filing a verified petition for liquidation with the court. The petition must establish the insolvency of the debtor, and must contain the following:

- A schedule of the debtor's debts and liabilities, including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any;
- An inventory of all of the debtor's assets, including receivables and claims against third parties; and
- The names of at least three nominees to the position of liquidator.

At any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings, the debtor may also initiate liquidation proceedings by filing, in the same court where the rehabilitation proceedings are pending, a motion to convert the rehabilitation proceedings into liquidation proceedings.

If the court finds the petition or the motion, as the case may be, to be sufficient in form and substance, the court will issue a Liquidation Order.

##### ***Involuntary Liquidation***

Three or more creditors of an insolvent corporate debtor whose claims total at least PHP 1,000,000 (approximately USD 21,267.78 at an exchange rate of USD 1 = PHP 47.02) or at least 25% of the subscribed capital stock or partners' contribution of the debtor, whichever is higher, may seek the liquidation of debtor by filing a petition for liquidation of the debtor with the court.

At any time during the pendency of or after a rehabilitation court-supervised or pre-negotiated rehabilitation proceeding, three or more creditors whose claims are at least either PHP 1,000,000 or at least 25% of the subscribed capital or partners' contributions, whichever is higher, may also initiate liquidation proceedings by filing a verified motion, in the same court where the rehabilitation proceedings are pending, to convert the rehabilitation proceedings into liquidation proceedings.

If the court determines the petition or motion to be meritorious, it will issue a Liquidation Order.

On the other hand, any creditor or group of creditors with a claim of, or with claims aggregating at least PHP 500,000 (USD 10,633.89 at an exchange rate of USD 1 = PHP 47.02) against an individual debtor may file a verified petition for liquidation with the court of the city or province in which the debtor resides. The court will issue an order requiring the individual debtor to show cause why he should not be declared an insolvent. If the individual debtor defaults or if, after trial, the issues are found in favour of the petitioning creditors, the court will issue the Liquidation Order.

### **Effects of the Liquidation Order**

Upon the issuance of the Liquidation Order:

- The juridical debtor will be deemed dissolved and its corporate or juridical existence terminated;
- Legal title to and control of all the assets of the debtor, except those that may be exempt from execution, will be deemed vested in the liquidator or, pending his election or appointment, with the court;
- All contracts of the debtor will be deemed terminated and/or breached, unless the liquidator, within 90 days from the date of his assumption of office, declares otherwise and the contracting party agrees;
- No separate action for the collection of an unsecured claim will be allowed. Such actions already pending will be transferred to the liquidator to accept and settle or contest. If the liquidator contests or disputes the claim, the court will allow, hear and resolve such contest, except when the case is already on appeal. In such a case, the suit may proceed to judgment, and any final and executory judgment therein for a claim against the debtor will be filed and allowed in court; and
- No foreclosure proceeding will be allowed for a period of 180 days.

### **Rights of Secured Creditors**

The Liquidation Order will not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law. A secured creditor may:

- Waive his right under the security or lien, prove his claim in the liquidation proceedings and share in the distribution of the assets of the debtor; or
- Maintain his rights under the security or lien.

If the secured creditor maintains his rights under the security or lien:

- The value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance. If its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;
- The liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
- The secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

### **Liquidation Plan**

Within three months from assumption into office, the liquidator must submit a Liquidation Plan to the court. The Liquidation Plan must, as a minimum, enumerate all the assets of the debtor and all the claims against the debtor and provide a schedule of liquidation of the assets and payment of the claims.



The liquidator must implement the Liquidation Plan as approved by the court. Payments must be made to the creditors only in accordance with the provisions of the Liquidation Plan. But if the debtor and creditor are mutually debtor and creditor of each other, one debt shall be set off against the other. Should there be any balance, then the balance will be allowed in the liquidation proceedings.

### **Concurrence and Preference of Credits**

The Liquidation Plan must ensure that the concurrence and preference of credits as enumerated in the Civil Code and other relevant laws will be observed, unless a preferred creditor voluntarily waives his preferred right. Credits for services rendered by employees or labourers to the debtor enjoy first preference, unless the claims constitute legal liens under relevant provisions of the Civil Code.

Certain types of credits enjoy preference with respect to specific movable or immovable properties ("**special preferred credits**").

Among the special preferred credits, taxes and assessments due upon the property to which the claims relate enjoy absolute preference. All the remaining classes of special preferred credits with respect to specific movable or immovable property (e.g. credits secured by a pledge or mortgage) do not enjoy priority among themselves, but must be paid concurrently and *pro rata*, i.e. in proportion to the amount of the respective credits.

Credits that do not enjoy any preference with respect to specific property are satisfied in the order established in article 2244 of the Civil Code. Article 2244 provides for the preference of certain claims and credits which, without special privilege, appear in either a public instrument (i.e. the instrument is notarised) or a final judgment. These credits have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively.

### **Clawback Provisions**

Any transaction occurring prior to the issuance of the Liquidation Order or, in case of the conversion of the rehabilitation proceedings, prior to the commencement date, entered into by the debtor or involving its assets, may be rescinded or declared null and void on the ground that the same was executed with intent to defraud a creditor or creditors or which constitute undue preference of creditors.

The liquidator or, with his conformity, a creditor may initiate and prosecute any action to rescind, or declare null and void, any transaction described in the immediately preceding paragraph.

### **Cross-Border Insolvency Proceedings**

The FRIA provides for recognition of foreign insolvency proceedings and adopts the UNCITRAL Model Law on Cross-Border Insolvency, subject to the FR Rules.

The FR Rules apply when:

- Assistance is sought in a Philippine court by a foreign court or a foreign representative in connection with a foreign proceeding;
- Assistance is sought in a foreign State in connection with a proceeding governed by the FRIA and the FR Rules;
- A foreign proceeding and a proceeding governed by the FRIA and the FR Rules are concurrently taking place; or
- Creditors in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the FR Rules for court-supervised rehabilitation, pre-negotiated rehabilitation or OCRA.

Foreign creditors are accorded the same rights as creditors in the Philippines in proceedings involving court-supervised rehabilitation, pre-negotiated rehabilitation and OCRA governed by the FR Rules.

However, courts must refuse to take any action in any cross-border insolvency proceeding where: (i) the action would be manifestly contrary to the public policy of the Philippines; and (ii) the court finds that the country where the foreign rehabilitation proceeding is taking place does not extend recognition to a Philippine rehabilitation proceeding, or that the country of which the petitioner-foreign creditor is a national does not grant the same rights to a Philippine creditor in a manner substantially in accordance with the FR Rules.

### **Rules of Procedure**

Under the FRIA, the Supreme Court is tasked with designating the court or courts that will hear and resolve cases brought under its provisions and to promulgate the rules of pleading, practice and procedure to govern the proceedings.

To this end, the Supreme Court has issued a resolution<sup>8</sup> designating the branches of the various Regional Trial Courts in the country that will try and decide cases previously under the jurisdiction of the Securities and Exchange Commission under PD 902-A, which includes petitions of corporations, partnerships or associations to be declared in the state of suspension of payments. More recently, the Supreme Court has issued another resolution<sup>9</sup> expressly stating that all cases on insolvency and liquidation under the FRIA are cognizable only by the Regional Trial Courts designated as special commercial courts.

The Supreme Court has also issued the FR Rules to implement the FRIA. The FR Rules apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships filed pursuant to the FRIA. Under the FR Rules, any order issued by the court in a rehabilitation proceeding is immediately executory. A party may file a motion for reconsideration against any order issued by the court prior to the approval of the Rehabilitation Plan, but an order issued after the approval of the Rehabilitation Plan may only be reviewed by a special civil action for certiorari under Rule 65 of the Rules of Court.

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<sup>8</sup> Supreme Court Administrative Matter No 00-11-03.

<sup>9</sup> Supreme Court OCA Circular No. 11-2016, amending Administrative Matter No. 03-03-03-SC.