Examining the Standards for the Approval of Rehabilitation Plans in Corporate Rehabilitation Proceedings

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I. INTRODUCTION

Laws allowing for corporate rehabilitation *vis-à-vis* laws allowing for the corporate form of doing business are relatively new introductions. Although laws allowing for the corporate form of doing business already existed as early as 1 April 1906, when the Congress enacted the Corporation Law (Act No. 1459),[1] the law which would allow corporations otherwise insolvent to seek the suspension of payments of debts came only in 11 March 1976 with the enactment of Presidential Decree No. 902-A[2] (P.D. No. 902-A).

Before P.D. No. 902-A, the law which provided for the only remedies that distressed corporations may avail of was the Insolvency Law,[3] short of the corporation breaching its obligations towards its creditors. The Insolvency Law's primary purpose was to afford the individual debtor in good faith a fresh start in life. It did not grant discharge to a corporate debtor as a consequence of going through insolvency proceedings. Under the Insolvency Law, the only remedies that a corporation could avail of were:

1. Suspension of payments — when the corporate debtor seeks the postponement of the payments of the debts where the debtor possesses sufficient property to cover its debts, but foresees the impossibility of meeting them when they respectively fall due.[4]

2. Insolvency proceedings — when the corporate debtor does not have enough assets or properties to cover its obligations. This involves the conveyance of the debtor's property to an assignee in insolvency, and the liquidation of the assets and payment of debts.

Thus, under the Insolvency Law, a corporation must have the financial capacity to pay its debts. If it does not have such capacity, thereby breaking

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1. An Act Providing for the Formation and Organization of Corporations, Defining their Powers, Fixing the Duties of Directors and Other Officers thereof, Declaring the Rights and Liabilities of Shareholders and Members, Prescribing the Conditions under which such Corporation may Transact Business, and Repealing certain Articles of the Code of Commerce and all Laws or Parts of Law in Conflict or Inconsistent with this Act, Act No. 1459 (1906) [THE CORPORATION LAW] was replaced by the Corporation Code of the Philippines [CORPORATION CODE], Batas Pambansa Blg. 68 which was enacted on 1 May, 1980.

2. Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency Under the Administrative Supervision of the Office of the President, Presidential Decree No. 902-A (1976).

3. An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors, Act No. 1956 (1909) [INSOLVENCY LAW].

4. *Id.* § 2.

its covenant with its creditors, the consequences it will face are akin to a virtual destruction of its status as a going concern. This is because while the corporate charter itself is not revoked, the assets of the insolvent corporation are realized by the assignee in insolvency to satisfy the creditor's claims, and the corporation is stripped of its assets, and is virtually a hollow shell. The enactment of P.D. No. 902-A is therefore a milestone in the sense that it allowed corporations which did not have enough assets to meet its debts to still continue as a going concern, in the hopes that it will recover and eventually pay its creditors. P.D. No. 902-A's whereas clauses reflect this ideal, revealing that it was enacted:

> ...in line with the government's policy of encouraging investments, both domestic and foreign, and more active public participation in the affairs of private corporations and enterprises through which desirable activities may be pursued for the promotion of economic development; and, to promote a wider and more meaningful equitable distribution of wealth, there is a need for an agency of the government to be invested with ample powers to protect such investment and the public...[5]

The capacity of a corporation to rehabilitate itself, that is, to continue its corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency,[6] thus came into existence. Corporate rehabilitation seems to have several benefits. Since the dominant vehicle by which key business activities are conducted is now the corporation, a corporation often finds itself in a web of various stakeholders which could fall when the corporate life is snuffed out. Thus, in undertaking rehabilitation, the idea is to put the distressed corporation back into a state of viability, a condition which benefits not only the corporation and its stockholders but also its creditors who are thereby assured of being paid. Rehabilitation enables the company to gain a new lease on life thereby allowing the claims of its creditors to be paid from its earnings. Parenthetically, the rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders, and in a large sense, the general public.[7] There are other practical economic benefits to corporate rehabilitation as well. Entities which purchase the assets of a corporation during the foreclosure may not have the competence to run the business. Society may benefit in allowing a corporation to continue running its

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5. P.D. No. 902-A, Whereas Clause.

6. Ruby Industrial Corp. v. CA, 284 SCRA 445 (1998); Philippine Veterans Bank v. Vega, 360 SCRA 33 (2001).

7. Arturo M. De Castro, *Equality in Equity: Equal Footing of Secured and Unsecured Creditors in Suspension of Payments and Rehabilitation Proceedings*, 49 ATENEO L.J. 45 (2004).

business which it has already gained competence in, rather than allowing its resources to be under-utilized, and its expertise and proficiency wasted.

Corporate rehabilitation however requires a sacrifice from a distressed corporation's debtors. It may no longer strictly enforce the distressed corporation's obligations and is made to take or suffer what is colloquially termed as a "haircut." The enactment of a corporate rehabilitation law is therefore an exercise of police power. The distressed corporation and its creditors are bound by a contract which is the loan agreement, which will require the distressed corporation to make payments as they fall due. Placing the corporation in a state of rehabilitation allows the corporation to break off on its obligations under the loan agreement. Thus, it is an instance where the State enacts legislation impairing otherwise valid contracts, in the exercise of its police power. Although arguments continue to be raised against the constitutionality of the court's power to cram-down on the creditor's rights, the Supreme Court has repeatedly ruled that "the constitutional guaranty of non-impairment... is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare."[8]

The awesome reach of police power is equaled only by the presumption of constitutionality accorded to it by courts. The Supreme Court has consistently ruled that the judiciary should not set aside police power action when there is no clear invasion of personal or property rights under the guise of police regulation.[9] However, the exercise of police power is kept in check by the Constitution's Bill of Rights. The Supreme Court has ruled that corporations enjoy certain constitutional rights, among which is the right to due process.[10] If a serious challenge may be raised by creditor corporations on the fact of a corporation being placed under rehabilitation, *i.e.*, the approval of its plan for rehabilitation being approved, it will be on the grounds that the order approving the plan was based on a fraudulent petition, or that the order was issued in grave abuse of discretion.

An examination of the standards provided under the current law, implementing rules and judicial precedents will reveal that courts have been given wide discretion in the approval of rehabilitation plans. Creditor corporations are left at the mercy of the judge with whom the power to

8. Abe v. Foster Wheeler Corporation, 110 Phil. 198, 203 (1960).

9. *See* Case v. Board of Health, 24 Phil. 259 (1913); Churchill v. Raffferty, 32 Phil. 580 (1915); Ebona v. Daet, 85 Phil. 369 (1950); Ermita Malate Hotel and Motel Operators v. City Mayor of Manila 20 SCRA 849 (1967); Morfe v. Mutuc, 22 SCRA 424 (1968).

10. Smith, Bell & Co. v. Natividad, 40 Phil. 136, 145 (1919); *see* Stonehill v. Diokno, 20 SCRA 383 (1967); Bache v. Ruiz, 37 SCRA 823 (1971); *but see* Bataan Shipyard v. PCGG, 150 SCRA 181 (1987).

approve the petition and the plan for rehabilitation, which will determine how the distressed corporation's debts will be paid off, is vested. The situation has therefore been reversed. Where previously a corporation that breaks its compact with its creditors is sanctioned under the Insolvency Law, it would almost appear that under current law, the creditor corporation is now sanctioned for throwing its fate with the distressed corporation.

This essay goes through an examination of the standards that are currently in place on the approval of rehabilitation plans and submits an analysis of these current standards. The essay will also trace the development of the standards for the approval of rehabilitation plans and examine the question of whether other informal sources of standards exist which may guide the courts in examining rehabilitation plans. Based on this framework, the essay will attempt to discuss the direction that corporate rehabilitation appears to be headed.

II. THE STANDARDS USED IN CORPORATE REHABILITATION

The primary law on the subject matter of corporate rehabilitation is P.D. No. 902-A, when it was originally drafted and promulgated by President Ferdinand E. Marcos on 11 March 1976.[11] The lone provision in P.D. No. 902-A pertaining to corporate rehabilitation was Section 5 (d) of the law which states:

> Section 5.[12] In addition to the regulatory adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
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> d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover liabilities, but is under the management of a rehabilitation receiver or management committee created pursuant to this Decree.

P.D. No. 902-A is currently being implemented by the Supreme Court's Interim Rules of Procedure on Corporate Rehabilitation[13] (Rehabilitation

11. P.D. No. 902-A has been amended by P.D. Nos. 1653, 1758, 1799 and by the Securities and Regulation Code (R.A. No. 8799).

12. As amended by P.D. No.1758.

13. INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, A.M. No. 00-8-10-SC (2000) [REHABILITATION RULES].

Rules), which were enacted after jurisdiction over corporate rehabilitation cases were transferred from the Secuties and Exchange Commission (SEC) to Regional Trial Courts (RTCs).

The Rehabilitation Rules provide that when the petition for rehabilitation is sufficient in form and substance, the court shall, not later than five days from the filing of the petition, issue an order which shall, among others, stay the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor.[14] This is called the "Stay Order," which therefore makes the proceedings of the rehabilitation urgent. The creditors of the distressed corporation can no longer file cases for collection, and those secured creditors may not enforce their claims by foreclosing on the security provided by the distressed corporation. The creditors therefore have an incentive to either challenge the corporation's rehabilitation, or to work for the approval of the corporation's rehabilitation plan.

The important point for the adjudicating body in rehabilitation proceedings to consider would be the standards for the approval of said rehabilitation plan. The Rehabilitation Rules provide the following standards in the approval thereof:

> Rule 4
> Rehabilitation
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> Section. 23. Approval of the Rehabilitation Plan – The Court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor, if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.
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> In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:
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> That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three month period;
>
> That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and
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> The Rehabilitation Receiver has recommended approval of the plan.
>
> In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the

14. *Id.* RULE 4, § 6 (b).

> protection and preservation of the interests of the creditors should the plan fail.[15]
>
> In essence therefore, the standards under the Rehabilitation Rules for the approval of a rehabilitation plan are: (a) that the Court finds that the rehabilitation of the debtor is feasible and (b) the opposition of the creditors is manifestly unreasonable.

A. Feasibility Standard

The Rehabilitation Rules do not provide a standard as to when rehabilitation may be considered "feasible." But the accepted standard to consider a matter feasible is when a plan is workable and has a reasonable likelihood of success.[16] The proposed rehabilitation plan appears to have a huge burden. It has to set out a plan that will turn the corporation around to a positive direction despite the negative direction that it has so far taken. The proposed rehabilitation plan must contain the following:

1. the desired business targets or goals and the duration and coverage of the rehabilitation;
2. the terms and conditions of such rehabilitation which shall include the manner of implementation, giving due regard to the interests of secured creditors;
3. the material financial commitments to support the rehabilitation plan;
4. the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest;
5. a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and
6. such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.[17]

The judge is thus placed in a position where he is forced to make decisions on matters that he may not be familiar with. He has to make a decision on the validity of economic forecasts that would be submitted, the validity of the forecasted demand on the products and services of the corporation, and whether the strategic plan proposed by the corporation to

15. *Id.* RULE 4, § 23.

16. BLACK'S LAW DICTIONARY 625 (7th ed., 1999).

17. REHABILITATION RULES, RULE 4, § 5.

take advantage of whatever economic prospects that may exist has a chance to succeed. With the enactment of Republic Act No. 8799, otherwise known as the Securities Regulation Code,[18] the quasi-judicial functions of the SEC over corporate recovery cases were transferred to the RTCs.[19] Pursuant to the terms of Section 5.2 of the Securities Regulation Code, jurisdiction over corporate rehabilitation proceedings was thus transferred to the RTC.[20] Now, only specifically designated RTCs, called Commercial Courts, may try cases formerly cognizable by the SEC. These courts would try and decide the SEC cases enumerated in Sec. 5 of P.D. NO. 902-A arising within their respective territorial jurisdictions.[21] By designating

18. The Securities Regulation Code, Republic Act No. 8799 (2000).

19. Marie-Rose B. Lim, *Moving Towards a Corporate Recovery and Insolvency Law*, THE LAWYER'S REVIEW 18 (Oct. 31, 2004).

20. CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 641 (2001 ed.) [hereinafter VILLANUEVA, CORPORATE LAW].

21. Supreme Court A.M. No. 00-11-03-SC (Sec. 5 of P.D. NO. 902-A, which provided for the quasi-judicial jurisdiction of the SEC and which was amended by P.D. 1758, provided for the following:

> Section 5. In addition to the regulatory adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
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> Devices of schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.
>
> Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity.
>
> Controversies in the elections or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.
>
> Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they fall respectively due or in cases where the corporation, partnership or association has no sufficient assets to cover liabilities, but is under the management of a rehabilitation receiver or management committee created pursuant to this Decree.)

certain courts to handle cases involving corporate rehabilitation, the Supreme Court is tasking these courts to acquire a familiarity, if not expertise, on the analytical tools that would be required to intelligently rule on the feasibility of corporate rehabilitation plans. Courts which were tasked to hear petitions for rehabilitation would be akin to administrative agencies whose "special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters" makes them "well nigh indispensable."[22]

B. Opposition of Creditors Manifestly Unreasonable

The state of rehabilitation allows the distressed corporation to temporarily suspend the payment of its debts to its creditors. Even the creditors who might have chosen to foreclose on the securities granted by the corporation in their favor are prohibited from doing so by the Stay Order issued by the court. This is immensely favorable to the corporation under rehabilitation which may have mortgaged the very assets it needs to operate the business. The Stay Order and the rehabilitation proceedings allow the distressed corporation to literally acquire a new lease on its economic life.

Creditors however would understandably oppose the rehabilitation. In such a proceeding, all creditors, secured and unsecured, are treated in the same manner — neither class of creditors is allowed to pursue their claims against the corporation. The creditor is actually given a voice as to whether the rehabilitation plan of the corporation should be approved. The Rehabilitation Rules specifically provide for this. However, when their opposition is manifestly unreasonable, then the court may choose not to consider their objection. The Rehabilitation Rules set out guidelines as to when their objections may be unreasonable, which are:

1. Whether the plan would provide the objecting creditors with compensation greater than they would have received if the assets of the debtor were sold within a three month period,
2. That the shareholders lose their controlling interest as a result of the plan, and
3. That the Rehabilitation Receiver has recommended approval of the plan.

These enumerated factors are considered by the court *prior* to the approval of the rehabilitation plan.

22. Abejo v. De La Cruz, 149 SCRA 654, 669 (1987).

1. Plan will provide objecting creditors greater compensation compared to dissolution

This first standard provides a test that essentially requires a cost-benefit analysis of the rehabilitation. The basic test is this: If after the corporation is placed in rehabilitation, the creditors will not be able to obtain more than what the creditors will stand to receive if the corporation's assets will be sold within a three month period. Note that selling the corporation's assets will destroy the corporation's ability to continue as a going concern. Hence, this standard determines if the effort to put the corporation through rehabilitation is worth the time, effort and resources to be expended. Thus, this standard appears to state that if rehabilitation will not place the corporation in a financially better position, it should have no right to prejudice the creditors by making them wait until their claims are enforced.

This test does not appear to consider the realities of investment options. Creditors may wish to demand what little may be obtained from the sale of the corporation's assets in order to invest the proceeds in some other more financially viable venture, rather than continue to place its stake in the distressed corporation. In effect, creditors may wish to pass up the opportunity of obtaining more in the long run, by taking advantage of the earning potential of their financial resources now. In effect, a peso received today may be worth more than a peso received in the future. But the standard provided does not allow a provision for "moving" the financial flow "back to the present" to consider if such larger future amount may turn out to be the same as the amount that would be received by liquidating the corporation immediately. If the distressed corporation, for example, was engaged in livestock during an era when an epidemic disease had arisen from livestock, the creditors of the distressed corporation may, after all, be better off liquidating the corporation rather than waiting for the results for what would most probably be an imminently futile rehabilitation. Less drastic scenarios could certainly arise, and in these situations, the creditors may wish to suffer a loss in the present time, because the gains that they will obtain may be far greater.

2. Loss of shareholders of their controlling interest.

Since the creditors of the distressed corporation are being asked to endure a financial sacrifice in allowing the collection of their debts to be suspended during the court proceedings while the rehabilitation plan is being heard and later when the plan is approved, the Rehabilitation Rules would consider a rehabilitation plan which likewise calls for a financial sacrifice on the part of the distressed corporation's shareholders to be reasonable. Thus, one gauge to consider the objection of the creditors to be manifestly unreasonable is when the plan already calls for the shareholders to suffer the loss of their controlling interest.

The fact that the distressed corporation's shareholders lose their controlling interest as a result of the entry of new shareholders may also be considered a mark of the distressed corporation's continued viability. This is because if, despite the lowest status of the shareholder in the hierarchy of claims in case a corporation goes into liquidation, new shareholders wish to place a stake in the corporation, then the entry of these new investors could indicate that third parties consider the rehabilitation plan to be viable. The new shareholder could be one of the creditors. If the creditor proposes to exchange its debt for equity, such creditor appears to have faith in the chances of the corporation to succeed after going through the rehabilitation process.

3. The Rehabilitation Receiver recommends the approval of the rehabilitation plan.

The Rehabilitation Receiver is considered an officer of the court.[23] His primary task is to study the best way to rehabilitate the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval.[24] The Rehabilitation Rules accord great respect to the findings of the Rehabilitation Receiver, making the latter's recommendation a factor in ascertaining whether the objections of the creditors are "manifestly unreasonable." The weight given to the findings is proper, since under the Rehabilitation Rules, the Rehabilitation Receiver should possess technical competence. Thus, he should possess the following:

1. Expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor;
2. Knowledge in management, finance, and rehabilitation of distressed companies;
3. General familiarity with the rights of creditors in suspension of payments or rehabilitation and general understanding of the duties and obligations of a Rehabilitation Receiver;
4. Good moral character, independence, and integrity;
5. Lack of a conflict of interest as defined in these Rules; and
6. Willingness and ability to file a bond in such amount as may be determined by the court.[25]

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23. REHABILITATION RULES, RULE 4, §14.

24. *Id.*

25. *Id.* RULE 4, § 13.

The judge of the rehabilitation court, whose training may have been legal rather than financial or technical as may be required in examining the feasibility of a proposed rehabilitation plan, may have to rely on the opinions of the Rehabilitation Receiver to a great extent. However, the Rehabilitation Receiver is tasked to consider whether or not the distressed corporation may be rehabilitated, that is, if it may be brought back to a sound financial condition.[26] The Rehabilitation Receiver's office is not to judge which course of action will be more beneficial to the creditors. Thus, a distressed corporation may very well have a good chance to be rehabilitated, but the rehabilitation thereof may not be advantageous to creditors.

It may be argued that the fact that the rehabilitation plan will not benefit, and may adversely prejudice, the creditors does not detract from the validity of the Rehabilitation Rules. Rehabilitation is precisely a police power measure which is entered into even if it may cause incidental burden to other parties, and the "compensation" to be received by such party is the more orderly functioning of the greater society. But the court-driven nature of the proceedings, which may be largely dependent on the recommendations of the receiver, may be using undue means for a valid purpose.

The process for the rehabilitation of corporations under the Rehabilitation Rules can be described as court-driven, because the process is controlled largely by the court, and the creditors do not have much participation, and less so any control, in deciding whether or not the corporation is to be placed under rehabilitation and the plan for the rehabilitation.

The Rehabilitation Rules then appear to be the exact opposite of the provisions of the SEC Rules of Procedure on Corporate Recovery (Recovery Rules) which provided the rules to implement P.D. No. 902-A when the implementation thereof was still in the jurisdiction of the SEC. The old standards for the approval of a Rehabilitation Plan were laid down in Section 20, Rule 4 of the SEC Recovery Rules. It provided:

> Section 20. Approval of the Rehabilitation Plan. — No Rehabilitation Plan shall be approved by the [Securities and Exchange] Commission if opposed by a majority of any class of creditors. The Commission may, upon motion, however, override said disapproval if such is manifestly unreasonable. The Rehabilitation Plan shall be deemed *ipso facto* disapproved and the petition dismissed if the Commission fails to grant the motion to override within thirty (30) days from the time it is subject to resolution.

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26. *Id.*

> In approving the Rehabilitation Plan, the Commission shall issue the necessary order or processes for its immediate and successful implementation. It may impose such terms, conditions or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the Plan fail.[27]

Whereas the current standards for the approval of a rehabilitation plan under the Rehabilitation Rules did not require concurrence of the creditors, the former standards under the SEC Recovery Rules required that the plan would not be "opposed by a majority of any class of creditors." However, the SEC Recovery Rules did provide that the SEC may, upon motion, override the disapproval of the creditors if such disapproval was manifestly unreasonable. Note that the SEC Recovery Rules do not specify any grounds in determining the unreasonableness of the disapproval of the creditors, unlike the Rehabilitation Rules which enumerated them under Sec. 23 thereof. Furthermore, under the SEC Recovery Rules, a rehabilitation plan is disapproved and the petition dismissed if the SEC fails to grant the override within 30 days from the time it is subject for resolution. This provision no longer appears in the Rehabilitation Rules.

The Rehabilitation Rules have therefore filled the bare outline provided by P.D. No. 902-A. There *are* standards that may guide the courts in adjudicating on the petition for rehabilitation. But the standards laid down in the Rehabilitation Rules clearly show that in ruling over the feasibility of a rehabilitation plan or in whether the objections of the creditors are manifestly unreasonable, more than depth in legal knowledge is required from courts. The court will need to understand the business and economic background against which the rehabilitation plan is to be evaluated. Has the court appreciated this unique role?

The inquiry proceeds by examining the cases that have been decided by the Supreme Court which may provide an indication on how courts have ruled on petitions for rehabilitation thus far. All told, the survey covers little more than 20 years of judicial precedents on a narrow scope of corporate rehabilitation. The dearth of cases reveals the relative infancy of corporate rehabilitation law in Philippine jurisprudence.

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27. SEC RULES OF PROCEDURE ON CORPORATE RECOVERY, RULE 4, § 20 [RECOVERY RULES].

III. A SURVEY OF JUDICIAL PRECEDENTS ON CORPORATE REHABILITATION

A. Cases Involving Corporate Rehabilitation Plans

The Supreme Court has not had much occasion to rule on the issue of approving the rehabilitation plan. Of those few cases that involve rehabilitation plans, even fewer expressly discuss the consideration for approval of such plans. Usually, such cases merely discuss in passing, if at all, the approval of rehabilitation plans.

The first two cases were decided under the auspices of the Recovery Rules, when rehabilitation proceedings were decided by the SEC.

In *BF Homes v. Court of Appeals*,[28] the debtor corporation being unable to pay the debt, filed a petition for rehabilitation with the SEC to be declared in a state of suspension of payments, and asked for approval of their proposed rehabilitation plan. The SEC would later approve the rehabilitation plan submitted, upon a finding of an urgent need to rehabilitate the debtor corporation. During the pendency of the petition before the SEC however, the creditors filed a complaint before the RTC for recovery of the amount of the loan from the debtor. The RTC allowed this case to proceed, ruling that it was merely a case for a determination of the rights of the parties arising out of the contract of loan. The Supreme Court disagreed. The Court found that as the revised rehabilitation plan approved by the SEC was expected to be implemented within ten years, the proceedings in the RTC should be suspended during that period, beginning from the date of its approval. This was without prejudice to the authority of the SEC to extend the period when warranted and even to order the liquidation of the debtor corporation if the plan was found to be no longer feasible. On the other hand, the SEC can also find within that period that the debtor has been sufficiently revived and able to resume its normal business operations without further need of rehabilitation.[29]

Hence, as the SEC had already approved the rehabilitation plan, the Supreme Court no longer went into the merits of the SEC's order approving the rehabilitation plan, and granted the suspension of the proceedings in the case before the RTC.

Chua v. National Labor Relations Commission,[30] on the other hand, involved the disapproval of a rehabilitation plan by the SEC, the validity of

28. B.F. Homes, Inc. v. Court of Appeals, 190 SCRA 262 (1990).

29. *Id.* at 269.

30. Chua v. NLRC, 190 SCRA 558 (1990).

liquidation proceedings, as well as jurisdictional issues over money claims. The debtor corporation filed a petition for suspension of payments and appointment of a rehabilitation receiver with the SEC. However, the SEC disapproved the Rehabilitation Plan and dismissed the petition for suspension of payments and appointment of a rehabilitation receiver. Subsequently, the SEC ordered the debtor corporation's liquidation through a memorandum of agreement between the secured creditors and the employees of the debtor corporation. The SEC appointed a liquidation committee. Because the debtor corporation had pending labor cases, the liquidation committee sought a stay of the pending labor cases before the labor courts.

Rather than staying the labor proceedings, one labor arbiter actually issued an order restraining the implementation of the liquidation of the debtor corporation. The Supreme Court in its decision, discussed the respective jurisdictions of the government agencies, that the jurisdiction over liquidation proceedings of insolvent corporations is vested in the SEC pursuant to P.D. No. 902-A, while jurisdiction over money claims of employees against their employees is vested with the Labor Arbiters whose decision may be appealed to the National Labor Relations Commission (NLRC). [31] The Supreme Court then ruled that it was the SEC which had jurisdiction in this case over the money claims instead of the NLRC. The Court held that the SEC's jurisdiction over the liquidation of the debtor corporation includes the money claims of its employees because these are also claims that are to be submitted in the course of the liquidation proceedings. The Court said:

> The money claims were presented after Stanford filed a petition for suspension of payments and appointment of a rehabilitation receiver with the SEC. In other words, the money claims were first filed when Stanford was already experiencing financial difficulties. Apparently, the employees filed the cases to enforce money claims which they might not collect in view of Stanford's financial crisis and impending closure. Under these circumstances, and bearing in mind the welfare of the workers and their voluntary choices as to how their claims may be equitably settled to their satisfaction, we rule that such money claims were correctly submitted in the course of the liquidation proceedings at the SEC.[32]

The Court also affirmed that the memorandum of agreement on the liquidation of the debtor corporation established by the parties under the aegis of the SEC, should be implemented.[33] By doing so, the Court thereby

31. *Id.* at 574.

32. *Id.* at 576.

33. *Id.* at 580.

respected the decision of the SEC that the rehabilitation plan was not feasible and that the corporation should be dissolved.

It is clear then that the general policy of the Courts is to sustain the decision of administrative authorities not only on the basis of the doctrine of separation of powers but also for their presumed knowledge and even expertise in the laws they are entrusted to enforce.[34] As can be seen in the above-mentioned cases, the Court accords great respect to the decisions on approval or even disapproval of rehabilitation plans by the SEC, which was an administrative agency with adjudicative power over rehabilitation proceedings at that time.

However, this general policy of the courts not to interfere with the actions of an administrative agency does not apply when there is a showing of capricious and whimsical exercise of judgment or grave abuse of discretion amounting to lack or excess of jurisdiction.[35]

Ruby Industrial v. Court of Appeals[36] is indicative of this thrust, where the Supreme Court did not follow the decision of the SEC with regard to approval of a rehabilitation plan. The Supreme Court did not even bother to rule on the parameters of the confirming power of the SEC, in spite of the fact that such parameters were raised by the oppositors to the rehabilitation plan approved by the SEC hearing panel.[37]

In this case, the SEC approved a rehabilitation plan for the debtor corporation. However, the Court of Appeals reversed this and the debtor corporation sought to challenge this decision. The Supreme Court upheld the Court of Appeals in reversing the SEC approval of the rehabilitation plan because the SEC acted arbitrarily when it approved it. It appeared that certain payments made by the debtor corporation to its creditors were considered unauthorized, hence, nullified by the Court of Appeals, which decision was upheld by the Supreme Court. The SEC, in approving the rehabilitation plan, in effect upheld those payments and considered them valid. The SEC therefore sanctioned a circumvention of the final decision of the Court of Appeals and ultimately the Supreme Court.

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34. Cuerdo v. Commission on Audit, 166 SCRA 657, 662 (1988); Santiago v. Deputy Executive Secretary, 192 SCRA 199, 208 (1990).

35. Akbayan-Youth v. COMELEC, 355 SCRA 318, 343 (2001); Nestle Philippines, Inc. v. Court of Appeals, 203 SCRA 504, 510 (1991).

36. Ruby Industrial v. Court of Appeals, 284 SCRA 445 (1998).

37. Cesar L. Villanueva, *Revisiting the Philippine "Laws" on Corporate Rehabilitation*, 43 ATENEO L.J. 183, 230 (1999) [hereinafter Villanueva, Corporate Rehabilitation].

The Court said:

> The settled doctrine is that factual findings of an administrative agency are accorded respect and at times, finality for they have acquired the expertise inasmuch as their jurisdiction is confined to specific matters. Nonetheless, these doctrines do not apply when the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.[38]

Though the court had disapproved the rehabilitation plan in *Ruby*, it did so because the plan challenged a previous decision of the courts, and not because the plan failed to meet specific guidelines laid down by law. In fact, the Supreme Court, in its decision to disapprove the plan, did *not* explicitly state nor follow specific standards on approval or disapproval of a rehabilitation plan. It can then be theorized that, had the SEC-approved rehabilitation plan not conflicted with a court decision, it would have been accepted by the Supreme Court, following the doctrine that findings of an administrative agency are accorded great respect by the courts.

Eventually, the Supreme Court began to make more explicit statements on the necessity to place corporations in a state of rehabilitation, as if in realization of its role in the rehabilitation of great economic forces.

In *Rubberworld Philippines Inc. v. National Labor Relations Commission*,[39] the debtor corporation filed before the SEC a petition for declaration of suspension of payments and sought the approval of a rehabilitation plan. The SEC approved the petition and ordered the creation of a management committee and the suspension of all actions for claims against Rubberworld. The debtor corporation then filed a motion to suspend proceedings pending before the Labor Arbiter on a case involving the illegal dismissal of the debtor corporation's employees. The Labor Arbiter and the NLRC denied this motion, ruling that the SEC order applied only to the enforcement of established rights and did not include the suspension of proceedings involving claims against Rubberworld which have yet to be ascertained,[40] in effect, allowing the claims of the laborers to carry on.

The Supreme Court reversed the NLRC's decision and suspended the proceedings in the labor cases, stating that "upon the creation of a management committee or the appointment of a rehabilitation receiver, all claims for actions 'shall be suspended accordingly.' No exception in favor of

38. *Ruby*, 284 SCRA at 455.

39. Rubberworld Phils. v. NLRC, 305 SCRA 721 (1999).

40. *Id.* at 725.

flabor claims is mentioned in the law. Since the law makes no distinction or exemptions, neither should this Court."[41]

Clearly, in *Rubberworld,* the issue raised by the parties and ultimately decided by the court did not involve the feasibility of their rehabilitation plan. However, in an *obiter dictum*, the Supreme Court said: "parenthetically, the rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and in a larger sense the general public."[42] The Court also said that: "the purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid for their claims from its earnings."[43]

These statements shed no light on what may be considered a feasible rehabilitation plan, nor does it provide a measure of when objections of creditors may be considered manifestly unreasonable. But it reveals the position of the Supreme Court in ruling on corporate rehabilitation cases. The Supreme Court understands that the rehabilitation is not entered into solely to benefit any particular group of a corporation's stakeholders, among which, the Court enumerates, are the debtor corporation's employees, creditors and stockholders and the general public. The rehabilitation allows for all these groups to be benefited. The Court then proceeds to say that the purpose of the rehabilitation is to (i) enable the debtor corporation to gain a new lease on life, (ii) thereby allowing creditors to be paid from the debtor corporation's earnings. This statement shows that while the Court says that rehabilitation is for the benefit of all of the debtor corporation's stakeholders, the creditor is placed foremost in an informal hierarchy. The new life of the debtor corporation is important insofar as it will allow for the creditor to be paid.

The more recent case of *Chas Realty Development Corp. v. Talavera*,[44] which was decided in 2003, is thus far, the only case which has reached the Supreme Court as of this writing that has applied the Interim Rules of Procedure on Corporate Rehabilitation. The decision in this case hinged on an interpretation of the provisions of the Rehabilitation Rules. However, the issue on which this case turned was not on the propriety of the approval of its rehabilitation plan.

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41. *Id.* at 729.

42. *Id.* at 728-29.

43. *Id.* at 732.

44. Chas Realty v. Talavera, 397 SCRA 84 (2003).

B. Analysis of the Standards Used by the Courts

A perusal of the decisions in the abovementioned cases shows us that the Court has not had much opportunity to elucidate on the standards on the approval of rehabilitation plans.

The Rehabilitation Rules promulgated by the Supreme Court has tried to fill the legislative void on the lack of discernable standards as to when a corporation may be allowed to go into rehabilitation. In the Memorandum of the Committee on SEC Cases which came up with what was then called the Proposed Rules of Procedure Governing Rehabilitation Cases Under P.D. No. 902-A, the Committee noted:

> The right of the creditors to oppose the approval of a rehabilitation plan is retained. Note, however, that even if a majority of the creditors oppose the plan, the court may override such opposition if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the objecting creditors is manifestly unreasonable guided by the standards provided in the Proposed Rules (Sec. 23, Rule 4). The standards are not contained in the SEC Rules. The SEC Rules provide only that the creditors' rejection may be overridden if it 'appears manifestly unreasonable,' without indicating what factors should be considered by the SEC in arriving at the conclusion. Some quarters have commented that this discretion, being too broad, can easily be abused.[45]

It would appear that the proposed draft of the Rehabilitation Rules provided for creditor-driven proceedings, giving the creditors the power to disapprove a rehabilitation plan proposed by the debtor corporation, with finality, as reflected in the minutes of the meeting of the SEC Cases. However, this was ultimately decided against:

> Section 4-23
>
> Atty. Balgos raised his objection to this provision. He stated that regardless of the opposition of the creditors, if the rehabilitation plan is reasonable, the same should be approved by the court and enforced upon the creditors. That is the cram down. According to him, the cram down consists of two things: first, approval despite opposition, and second, binding effect of the approved plan.
>
> It was thus agreed that the court may *motu proprio* approve the rehabilitation plan and in effect override all oppositions without necessarily acting on them. Once approved, the rehabilitation is binding, as contained in the cram down provision (Section 4-24, page 27).

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45. Memorandum of the Committee on the Proposed Rules of Procedure Governing Rehabilitation Cases Under P.D. No. 902-A, chaired by Mr. Justice Reynato S. Puno, dated November 11, 2000, at pp. 9-10.

The first paragraph of this section is thus deleted. (Page 26)[46]

But thus far, there has been a dearth of judicial pronouncements on how these standards will be applied and interpreted. Thus, the courts which now have jurisdiction over Rehabilitation Proceedings under the Securities Regulation Code and Supreme Court Circulars are not equipped with any foresight into how the guidelines in the Rehabilitation Rules will be implemented. The lack of guidelines on what may be considered "manifestly unreasonable objections" by the creditors on the proposed rehabilitation plan was sought to be addressed in the proposed Rehabilitation Rules. Professor Francis Ed. Lim, a member of the Committee, proposed that a standard should be provided to guide the RTCs in dealing with objections of creditors to a rehabilitation plan.[47] This may have led to the formulation of the three sub-items under the second paragraph of Section 23 of Rule 4.

But these three guidelines which propose to define when an objection of the creditor is manifestly unreasonable, as already pointed out, may have raised more questions than answers. They require the application of economic and financial principles that even trained legal minds may not be equipped to appreciate.

It should be noted that the transfer of the jurisdiction over the adjudicating body over petitions for rehabilitation from the SEC to commercial courts has an enormous implication on the burden of proof that should be satisfied by the petitioning distressed corporation. Even as the Recovery Rules and the Rehabilitation Rules are similar in many respects, a party petitioning under the Rehabilitation Rules would have a duty to present evidence on the facts in issue necessary to establish his claim by a greater amount of evidence. This is because civil proceedings held before courts require that evidence be established to a preponderant degree, compared to proceedings held before administrative agencies where evidence can be established to a mere substantial degree.

Note that the Rehabilitation Rules do not provide for the requirement of establishing evidence to a preponderant degree. However, they provide that the Rules of Court shall apply suppletorily to rehabilitation proceedings.[48] Although the Rehabilitation Rules call for a liberal

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46. Minutes of the Meeting of the Committee on SEC Cases, on the meeting dated Oct. 18, 2000, in the First Division Conference Room of the Supreme Court Main Building, at p. 3.

47. Minutes of the Meeting of the Committee on SEC Cases, on the meeting dated Sept. 15, 2000, in the Third Division Conference Room of the Supreme Court Main Building, at p. 1.

48. REHABILITATION RULES, RULE 2, § 2.

construction thereof to carry out the objectives of Sections 5 (d) and 6 (d) of P.D. No. 902-A, and to assist the parties in obtaining a just, expeditious and inexpensive determination of cases,[49] the liberal construction clause does not provide that an amount of evidence less than that which is preponderant may be allowed. Thus, this call for a suppletory application of the Rules of Court, which requires that in civil cases, the party having the burden of proof, which here may be the distressed corporation or its creditors, must establish his case by a preponderance of evidence.[50]

The burden of the petitioning distressed corporation has therefore increased. Whereas before, under proceedings before the SEC, a fact may be deemed established if it is supported by that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[51] now the party is burdened to adduce evidence that is superior to that of the other, or the evidence that is presented by the adverse party,[52] in this case, the opposing creditors.

This manner of requiring the distressed corporation to prove the feasibility of its rehabilitation plan to a preponderant degree may not seem novel. After all, civil cases are required to be proven by a preponderance of evidence. However, this is actually in stark contrast to the usual manner that corporate officers and a corporation's board of directors are allowed to act. In the usual course of things, the Business Judgment Rule creates a presumption of good faith on the directors, who may not be held liable for honest mistakes of judgment. Therefore, a director enjoys a presumption of good faith when he acts diligently. He can take calculated risks which are intended to further the financial ends of the corporation. The Business Judgment Rule protects directors so when a director acts within such business judgment, he cannot be held personally liable for the consequences of such acts.[53] Directors can therefore afford not to be conservative and passive – he can take advantage of opportunities that present themselves to the corporation. Certainly, this presupposes that prior to making a business decision, he has to inform himself with the use of all material information reasonably available.[54] But so long as he acts within such business judgment, he cannot be personally liable. In asking the court to cram down on the claims of the creditors and allow the corporation to go on in its operations

49. *Id.*

50. REVISED RULES OF EVIDENCE, RULE 133, § 1.

51. *Id.* RULE 133, § 5.

52. Air Phil. Corp. v. International Business Aviation Services, Phil., 438 SCRA 51 (2004).

53. VILLANUEVA, CORPORATE LAW, *supra* note 20, at 284.

54. Smith v. Van Gorkam, 488 A.2d 858 (Del. 1985).

without paying its debts for the meantime, the directors can no longer act in the free-handed manner where they are otherwise allowed under principles of Corporate Law. Now, he has to present evidence – facts which are supported by personal knowledge or authentic records, projections of financial experts with as small a margin of error as possible, and sworn undertakings by parties who promise to make capital infusions.

This is a totally alien manner of doing business for directors who were previously able to rely on their gut instincts, honed by years of experience and observing similar situations and being able to tell when an opportunity may be seized even when the facts would argue against this. This appears to be a sanction on the board of directors who have taken the corporation to its distressed state. But this requirement of proving the case to a preponderant degree is a point which can be used to challenge rehabilitation plans which may paint a rosy picture but is not supported by such evidence as would overcome the other party's objections. Whereas before, the director of the distressed corporation could choose to abandon conservatism to seize business opportunities, the same director now has to tread carefully and prudently, for he is essentially asking the court to sanction the breach of his contracts with his creditors.

IV. OTHER POSSIBLE SOURCES OF STANDARDS

For want of clear standards to help the courts in their application of standards for approval of corporate rehabilitation plans, the doctrines in the decisions of the SEC on approving or disapproving corporate rehabilitation plans may be instructive, and may be cited persuasively. The SEC was the body which adjudicated petitions for the rehabilitation of corporations since the inception of P.D. No. 902-A until the jurisdiction over these cases was transferred to courts by the Securities Regulation Code. The SEC decisions thus provide parameters which the SEC considered in the approval of rehabilitation plans, and these may serve to guide the courts. The SEC, being the administrative agency vested with the power to adjudicate cases on corporate rehabilitation, has acknowledged expertise in dealing with cases concerning rehabilitation. Its opinions, while accorded great respect when appealed to the courts, may likewise be accorded respect by courts independently of the appeals process, arising from the stature accorded to administrative agencies.

The possibility of relying on decisions of foreign courts in interpreting their bankruptcy laws is also discussed.

A. SEC Decision

Despite the promulgation of P.D. No. 902-A as early as 1972, the SEC started receiving petitions for the rehabilitation of corporations only in the 1980s. Some of the early cases which dealt with the approval of rehabilitation

plans are *In the Matter of the Petition for Suspension of Payments Floro Enterprise*[55] and *In Re: Petition for Suspension of Payments The Chargekard Corporation*.[56] What is notable in these cases is that in both, the SEC relied on the recommendations of the management committees, which were charged with, among others, evaluating the rehabilitation for the interest of the stockholders and creditors.

In *Floro*, the SEC was convinced by the support and cooperation of the minority of the creditors to afford the debtor corporation a chance to be rehabilitated, and thus created a management committee to oversee the determination of whether or not the continuance in business of the corporation would be feasible. The management committee was able to sufficiently show that the rehabilitation plan prepared by the debtor corporation was viable, causing the SEC to hold that "the recommendation of the Management Committee to rehabilitate *Floro* is well taken and justified and we are now compelled by the extreme sense of urgency to authorize and pursue the rehabilitation of [Floro] pursuant to PD 902-A." The SEC then approved the rehabilitation plan of the debtor corporation.

In *Chargekard*, a management committee was constituted upon the conformity of principal creditors to undertake the management of the debtor corporation and evaluate its rehabilitation "for the interest of its stockholders and creditor." The said committee studied ways and means to rehabilitate the company by either reviving its credit card business or even going into new businesses. This however, did not prosper, and in the final report submitted to the SEC, the management committee stated that, in its opinion, "the possibility of rehabilitating the company was nil," and that the company should be liquidated. The SEC, after a thorough review of all the documents submitted, held that the management committee's "recommendations to liquidate petitioner [Chargekard] is well-founded and justified." The SEC then disapproved the rehabilitation plan and instead ordered the company to be liquidated for the best interest not only of the corporation and stockholders, but also of all its creditors.

Thus it can be gleaned, based on the above SEC cases, that approval or disapproval of a rehabilitation plan rests greatly on the management committee created to shepherd distressed corporations back into viability. Given the absence of implementing rules, the SEC relied on Section 6(d) of P.D. NO. 902-A which empowered it to:

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55. In The Matter of the Petition for Suspension of Payments Floro Enterprises, SEC Case No. 2316, May 25, 1989.

56. In Re: Petition for Suspension of Payments The Chargekard Corporation, SEC Case. 3244, Aug. 2, 1990.

> [c]reate and appoint a management committee, board or body upon petition or *motu proprio* to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation (sic) of business operations of such corporations or entities, which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

The management committee[57] has been given the following powers under P.D. No. 902-A:

1. to have the powers of a receiver under the Rules of Court;
2. to take custody of, and control over, all the existing assets and property of such entities under management;
3. to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnership or other associations;
4. to determine the best way to salvage and protect the interest of the investors and creditors;
5. to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission;
6. to overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provisions of law, articles of incorporation or by-laws to the contrary.[58]

The management committee is mandated to report and be responsible to the SEC until dissolved by order of the SEC. Even then, the appointment of the management committee may still lead to a finding that the distressed corporation has no business continuing as a going concern: based on the findings and recommendation of the management committee, the SEC may determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors or the general public, order the dissolution of such corporation or entity and its remaining assets liquidated accordingly.[59]

The duties of the management committee during this period was then akin to a commissioner who may be appointed under the Rules of Court

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57. Or the rehabilitation receiver, board or body.

58. P.D. No. 902-A, § 6 (d) ¶. 2.

59. *Id.*

when both parties agree to a reference of a case before a commissioner,[60] or even if the parties do not consent, in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein;

2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect; and

3. When a question of fact, other than upon the pleadings, arise upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect.[61]

Given the early SEC rehabilitation cases, the SEC appeared to give the findings of the management committee the same status as those of the commissioner, which the Supreme Court described in the following manner:

> When a referee is appointed he becomes for the time being an accredited agent and an officer of the court, and the reference is clearly a judicial proceeding. What the referee does while acting within the scope of his official duty is, therefore, in contemplation of law, done by the court itself. Hence his conclusions must be assumed to be correct until error is properly shown. Each step in the progress of a cause should go some way toward the solution of the problem, or problems, therein presented. It follows that when the referee has examined the evidence and reached his conclusions of fact and law, those conclusions have a presumption in their favor, both of law and of reason. It would be impossible to administer justice on any other theory than that as facts are found and determined in accordance with the proper procedure of the court they must be assumed to be true until the contrary is shown.[62]

Thus, the management committee is virtually considered the adjudicator of first instance. At this point, the only guidelines on corporate rehabilitation was P.D. No. 902-A. It did not contain any provisions on how the members of the management committee was chosen. Eventually, the Recovery Rules would provide the following rules on the composition of the management committee:

> Section 5-2. Composition of the Management Committee. — Unless the parties have agreed otherwise, the Management Committee shall be composed of three (3) members chosen as follows:

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60. RULES OF COURT, RULE 32, § 1.

61. *Id.* RULE 32, § 2.

62. Kriedt v. McCullough, 37 Phil. 474, 482 (1918).

1. A representative of the secured creditors nominated by the seven (7) creditors holding the largest secured claims;
2. A representative of the unsecured creditors nominated by the seven (7) creditors holding the largest unsecured claims; and
3. A representative of the debtor nominated by its board of directors.

Given that the Recovery Rules were promulgated to govern the proceedings before the SEC, and that rehabilitation proceedings are no longer heard before the SEC, it is unclear whether these rules may still apply in the selection of the members of the management committee.

Furthermore, the Rehabilitation Rules do not contain any provision for the appointment of a management committee. In effect the Rehabilitation Rules seem to recognize only the appointment of a rehabilitation receiver. This would be less favored by distressed corporations because they would prefer management committees where there is a possibility of them being represented by at least one member of the management committee, under the guide for the composition of such committees found in the Recovery Rules.

Subsequently however, the Supreme Court issued the Interim Rules of Procedure Governing Intra-Corporate Controversies,[63] (Intra-Corporate Rules) which provides for the appointment of a management committee for a corporation undergoing rehabilitation. In addition, the Rehabilitation Rules provide for an instance where a management committee may be appointed.[64] Therefore, the appointment of a management committee may still be availed of as an incident to the rehabilitation proceedings, even under the Rehabilitation Rules. However, the instances where a management committee may be constituted are more limited. A management committee may be appointed when the following occur: (1) the dissipation, loss, wastage or destruction of assets or other properties; and (2) the paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.[65]

It can therefore be readily deduced that the recommendation of a management committee can still be given great weight, even under the

63. RE: INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES Under R.A. No. 8799, A.M. No. 01-2-04-SC (2001) [INTRA-CORPORATE RULES].

64. REHABILITATION RULES, RULE 3, § 14 provides that the rehabilitation receiver has the power to recommend the appointment of a management committee in the cases provided for under P.D. No. 902-A.

65. INTRA-CORPORATE RULES, RULE 9, § 1.

current laws in effect for rehabilitation, and which can then be rightly considered as an important consideration, or even standard for approval or disapproval of a rehabilitation plan. Despite this however, it must be noted that a petition for rehabilitation does not always result in the appointment of a receiver or the creation of a management committee. The SEC has to initially determine whether such appointment is appropriate and necessary under the circumstances.[66]

Later, the SEC started ruling with the benefit of the Recovery Rules to guide its proceedings. A case of note decided under the Recovery Rules is *In the Matter of: Petition for Suspension of Payment, Formation and Appointment of Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan v. Uniwide*.[67] In this case, the debtor corporation embarked on a nationwide expansion of their retail and realty businesses, which exhausted the companies' cash position and caused a huge amount of debt to be incurred. The debtor corporation also claimed that factors beyond their control and anticipation also came into play like the oversupply in the real estate business, the inflation, the unpredictable peso-dollar exchange which also resulted in soaring interest rates. Thus, there is a need for the petition for rehabilitation in order to allow for the servicing and eventual full payment of all debts by stabilizing their operations.

The SEC issued an order which suspended all claims, actions and proceedings against Uniwide before any court, tribunal, office, board body and/or Commission, and then proceeded to appoint an interim receivership committee, which was charged with the responsibility of, among others, developing a workable rehabilitation plan.

The proposed rehabilitation plan of the Receivership Committee was anchored on several principles, among which was the return of the debtor corporation to the core business of retailing, and a maximum debt reduction through a *dacion en pago* of non-operating assets. Upon submission of the rehabilitation plan, the SEC observed:

> We have reviewed and considered the pleadings filed in this case as well as the Amended Rehabilitation Plan. Appropriate it is to state that besides seeing petitioners being rehabilitated, our primary concern is the protection of rights and interests of the creditors. This concern stems from the highest level of public interest to promote initiatives and effort to resuscitate distressed corporation so that it may again be an ongoing business concern. Given this impetus, we are now driven by the highest sense of

66. RCBC v. IAC, et. al, 320 SCRA 279, 289 (1999).

67. In the Matter of: Petition for Suspension of Payment, Formation and Appointment of Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan v. Uniwide, SEC Case No. 06-99-6340, April 11, 2000.

> responsibility to see to it that petitioners be afforded a program of rehabilitation which will enable them to satisfy their outstanding obligations. It is undisputed that petitioners' business are viable and given sufficient breathing spell, petitioners may be able to meet and settle their just obligations. As we have previously ruled in the case of Philippine Blooming Mills, Inc. the plan for rehabilitation is always premised on a desire to save the corporation from liquidation and to continue its operations.[68]

In this case, the creditors of the debtor corporation opposed the rehabilitation. However, the SEC noted that since under the Recovery Rules, a rehabilitation plan may be disapproved only when opposed by a majority of any class of creditors, and given that the creditors who were opposed to the rehabilitation plan were less than the majority of the creditors, in numbers and amount of credit, the rehabilitation plan may be approved by the SEC. The decision to approve the Rehabilitation plan was arrived at not only by the number or percentage of the oppositors thereto, but by other substantial and material considerations, which were:

1. The disapproval of the amended rehabilitation plan will result in the withdrawal of cash and the consequent liquidation of the petitioning debtor corporation;
2. The liquidation of the petitioners will result in the unsecured creditors, which number approximately 1,200 not being able to recover any centavo on their claims;
3. Some of the creditors will be getting more than the amounts they loaned out to the debtor corporation because they are over-collateralized; and
4. The debtor corporation, a publicly listed corporation will become bankrupt, thereby resulting in the loss of the investment of hundreds of small investors.

From this, the SEC approved the amended rehabilitation plan and placed the debtor corporation in a state of suspension of payments.

Based on the enumeration above, the SEC appears to have considered not only the attendant material considerations surrounding the circumstances, the feasibility of the rehabilitation plan or the opposition of the creditors, but also the consequences that would arise if the corporation's petition for rehabilitation was disapproved. The SEC cited the effects that the liquidation of the corporation would cause to the unsecured creditors and stockholders of the debtor corporation.

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68. *Id.* at 9.

Therefore, it can be seen that when the SEC decided corporate rehabilitation cases filed before it, while it was issuing rulings based on the guidelines provided in P.D. No. 902-A and the Recovery Rules, the SEC's policy was to approve rehabilitation plans which (1) obtained the endorsement of the SEC appointed management committee or receiver or (2) could adversely prejudice the attendant substantial and material considerations. Thus, in litigations involving the approval of a rehabilitation plan, the resolution of the issue may turn on these issues.

B. Corporate Rehabilitation/Reorganization under the American Jurisdiction

The Philippine Supreme Court has relied on decisions of foreign courts as authority in its decisions and does so when the law under consideration was adapted from a foreign counterpart.[69] If Philippine courts are to find foreign decisions persuasive in deciding cases involving corporate rehabilitation, it must also find a close connection between Philippine rehabilitation law and foreign law.

The piece of foreign legislation which bears most similarity with Philippine guidelines on corporate rehabilitation is Chapter 11 of the Bankruptcy Reform Act of 1978. The relationship, however, is tenuous. Chapter 11 of the Bankruptcy Act would have to be compared with P.D. No. 902-A, and the comparison yields neither identity nor similarity.

There has also yet been no judicial precedent which acknowledges that P.D. No. 902-A, the law which governs corporate rehabilitation in the Philippines was adopted from the Bankruptcy Code. While the Supreme Court has, in *Mitsui Bussan Kaisha v. Hongkong Shanghai Banking Corp.*[70] considered that in relation to the American bankruptcy law, Act. No. 1956 or the Insolvency Law of the Philippines is essentially more of a bankruptcy law rather than an insolvency law in the sense that it discharges the honest debtor. Furthermore, in *Urquijo, Zuloaga y Escubi v. Unson*,[71] the Philippine Supreme Court directly stated that the Insolvency Law is an adaptation of the law of California, which in turn was based upon the United States

69. *See* Secretary of Justice v. Sandiganbayan, A.M. No. 01-4-03 SC, June 29, 2001 (where the Supreme Court relied completely on the American case of Estes v. Texas, 381 U.S. 532 (1965) to rule that television coverage of judicial proceedings would involve an inherent denial of the due process rights of a criminal defendant.); *see also* Posadas v. Court of Appeals, 188 SCRA 288 (1990) (where the Philippine Supreme Court adapted the "stop and frisk" rule from the American case of Terry v. Ohio, 392 U.S. 1 (1968) as one of the warrantless searches and seizures allowed by both American and Philippine Constitutions.).

70. Mitsui Bussan Kaisha v. HSBC, 36 Phil 27, 38 (1917).

71. Urquijo, Zuloaga y Escubi v. Unson, 49 Phil. 79, 85 (1926).

Bankruptcy Act of 1867. It has been observed that the Insolvency Law, especially the portion dealing with voluntary and involuntary insolvency, seems to indicate that our Legislature intended to establish here the essential features of the American system. It has thus been opined that Philippine courts may, therefore, look to the decisions of the United States Supreme Court for guidance in appropriate cases.[72]

However, these merely provide authority for the position that the Insolvency Law of the Philippines may have been lifted from an American model. The Insolvency Law would not have provided basis for the rehabilitation of corporations and provided discharge only for individual debtors. It is apparent that the Rehabilitation Rules promulgated by the Supreme Court adopts some of the standards provided for in the Bankruptcy Code for the approval of rehabilitation plans. The Bankruptcy Code provides for 13 mandatory requirements[73] for the confirmation of a reorganization plan which should lead the a readjustment of the rights of the debtors and creditors, the most important of which are that

1. the plan has been proposed in good faith and not by any means forbidden by law;[74]
2. the confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan;[75]
3. with respect to each class or claims or interests, (1) such class has accepted the plan; or (2) such class is not impaired under the plan;[76] and
4. it does not discriminate unfairly with respect to the dissenting classes of claims or interests.[77]

The Rehabilitation Rules of the Supreme Court's own standards for the approval of rehabilitation plans' requirement of (a) feasibility and (b) that the objections are not manifestly unreasonable are similar to the second and third requirement above. However, a set standard is required under the Bankruptcy Code as to when a plan may be considered "feasible," *i.e.* when

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72. NARCISO PEÑA, CREDIT TRANSACTIONS 359 (1986 Rev. Ed).
73. 11 U.S.C. § 1129 (a).
74. *Id.* § 1129 (a) (3).
75. *Id.* § 1129 (a) (11). This has been called the "feasibility requirement." *See* Villanueva, Corporate Rehabilitation, *supra* note 37, at 190.
76. *Id.* § 1129 (a) (8).
77. *Id.* § 1129 (b) (1).

the confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization. Furthermore, under the Bankruptcy Code, the objection of the creditors to the approval of the plan does not require any gauge of being manifestly unreasonable. Thus, even if the comparison were to be based on the Philippine Rehabilitation Rules and the American Bankruptcy Code, which may be more similar than a comparison made with P.D. No. 902-A, the differences are still enough as to nullify any persuasive effect that American judicial precedents may have over Philippine rehabilitation proceedings.

Dean Cesar Villanueva has written on the American parallel to the Philippine corporate rehabilitation, and has opined that the American rehabilitation proceedings, or reorganization as it is known in the United States, can serve as a proper frame of reference to the substantive discussion on corporate rehabilitation. Dean Villanueva notes that this is because the laws governing such rehabilitation proceedings in the Philippines were patterned after the American model.[78] Other authors have also written on the application of foreign judicial precedents on the domestic operation of corporate rehabilitation.[79] Nevertheless, Philippine and American corporate rehabilitation laws currently differ and this is highlighted by the current bills proposed in the Philippine Congress which seeks to fashion a closer parallel between Philippine corporate rehabilitation law and Chapter 11 of the Bankruptcy Code. Currently, there appears to be no basis to give any persuasive effect to American judicial precedents as an aid in interpreting the standards providing for the approval of rehabilitation plans of distressed corporations. The judicial attitude towards the persuasiveness of foreign decisions in our own courts has not been consistent, but the statement that the Supreme Court has made in *Sanders v. Veridiano*[80] cannot but call for caution among scholars and practitioners:

> The petitioners' counsel has submitted a memorandum replete with citations of American cases, as if they were arguing before a court of the United States. The Court is bemused by such attitude. While these decisions do have persuasive effect upon us, they can at best be invoked only to support our own jurisprudence, which we have developed and enriched on the basis of our own persuasions as a people, particularly since we became independent in 1946.

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78. Villanueva, Corporate Rehabilitation, *supra* note 37, at 190.

79. *See* Axel Rupert Cruz, *Establishing the Bases and Extent of the Principle of "Adequate Protection" for Secured Creditors in Philippine Corporate Rehabilitation Proceedings*, 47 ATENEO L.J. 956 (2003); *see also* ARTURO M. DE CASTRO, SECURITY INTERESTS IN BANKRUPTCY AND REORGANIZATION PROCEEDINGS IN THE UNITED STATES AND THE PHILIPPINES 179 (1982 ed.).

80. Sanders v. Veridiano, 162 SCRA 88 (1988).

> We appreciate the assistance foreign decisions offer us, and not only from the United States but also from Spain and other countries from which we have derived some if not most of our own laws. But we should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice.[81]

V. THE DIRECTION OF THE FUTURE

A number of bills are pending in Congress which seeks to consolidate the substantive and procedural laws on corporate rehabilitation and fashion a set of guidelines that will govern rehabilitation proceedings. These bills also propose amendments that will address the concern that rehabilitation proceedings are court-driven to the extent that debtors are unduly favored. Four of these bills which have virtually identical proposals are:

1. House Bill No. 2007 of the First Regular Session of the 12th Congress[82]
2. House Bill No. 3038 of the First Regular Session of the 12th Congress[83]
3. Senate Bill No. 208 of the First Regular Session of the 13th Congress;[84] and
4. Senate Bill No. 1847 of the First Regular Session of the 13th Congress.[85]

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81. *Id.* at 99.
82. An Act Providing for the Recovery of Financially Distressed Enterprises and the Resolution of Their Indebtedness, H.B. No. 2007. It was introduced by Representatives Joey Sarte Salceda, Enrico P. Echiverri and Amado T. Espina, Jr. *available at* www.congress.gov.ph (last accessed Jan. 30, 2006).
83. An Act Providing for Debt-Relief Measures to Rehabilitate Financially Distressed Enterprises and for Other Purposes, H.B. No. 3038. It was introduced by Representative Ma. Theresa T. Defensor, *available at* www.congress.gov.ph (last accessed Jan. 30, 2006).
84. An Act Providing for the Recovery of Financially Distressed Enterprises and the Resolution of Their Indebtedness, S.B. No. 208. It was introduced by Senator Sergio R. Osmeña III.
85. An Act Providing for the Recovery of Financially Distressed Enterprises and the Resolution of Their Indebtedness, S.B. No. 1847. It was introduced by Senator Edgardo J. Angara.

The discussion on these pieces of proposed legislation shall use House Bill No. 2007 as a reference. Under these proposals, the class of corporations allowed to be placed in a state of rehabilitation has been expanded to include corporations which foresee the inability of paying its obligations as they come due, or that believes itself to be insolvent.[86] But rehabilitation plans no longer occupy the central role in the rehabilitation of the corporation, because a method called "fast track rehabilitation" is proposed as the only remedy available, unless:

1. the debtor has initiated voluntary proceedings seeking a pre-negotiated rehabilitation;
2. the debtor is a non-stock corporation or a partnership; or
3. more than half of the secured creditors request conversion to relief under court-supervised rehabilitation.[87]

The fast track rehabilitation calls for the following:

1. the appointment of a conservator who shall establish a subsidiary corporation whose shares shall be issued to the debtor;[88]
2. the payment of these shares by the debtor through the transfer all or substantially all of the assets of the debtor to the subsidiary corporation, which may be done without the approval of the debtor's shareholders and notwithstanding the provisions of the Corporation Code;[89]
3. the conservator may also arrange for the issuance of bonds by the subsidiary corporation to the debtor;[90]
4. the shares and bonds of the subsidiary corporation shall be offered to the public in a manner designed to maximize the price paid;[91]
5. after distribution of the proceeds from the sale of the shares of the subsidiary corporation, the conservator shall assume the rights and duties of a liquidator of the debtor and then finalize its dissolution.[92]

The proceedings where a rehabilitation plan is prepared and approved by the court is now available only when the majority of the secured creditors of a distressed corporation ask the court for this particular remedy, either

86. H.B. No. 2007, § 13.
87. *Id.* § 57 (a) to (c).
88. *Id.* § 59.
89. *Id.* § 60.
90. *Id.* § 61.
91. *Id.* § 63.
92. *Id.* § 70.

through a motion submitted to the court, or in an affidavit attached to the petition.[93]

The following are described as the "minimum standards" that are necessary for court approval of a rehabilitation plan:

1. the plan has the minimal contents required under the Section 76 of the Act;[94]
2. the plan maintains the security interest of secured creditors unless such has been waived or modified voluntarily;
3. the plan has been duly disclosed to creditors and shareholders according to the manner required;

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93. *Id.* § 71. The remedy is primarily available only for non-stock corporations, partnerships and associations.

94. *Id.* § 76 states, in full:

> In order to be approved by the Court, the plan shall:
>
> (a) contain information sufficient to give the various classes of creditors and shareholders a reasonable basis for determining whether supporting the plan is in their financial interest when compared to the liquidation of the debtor;
>
> (b) establish classes of creditors and shareholders based on, at a minimum, the classes of priority claims established in sub-chapter 4 of this Chapter;
>
> (c) specify the treatment of each class described in sub-section (b);
>
> (d) provide for equal treatment of all unpaid claims within a class unless the particular creditor voluntarily agrees to less favorable treatment;
>
> (e) disclose all payments of pre-petition debts made during the proceedings and the justifications thereof;
>
> (f) describe the claims against the debtor still subject to dispute and the provisioning of funds to account for appropriate payments should the claim be ruled valid or its amount adjusted;
>
> (g) require the debtor and its counter-parties to adhere to the terms of all contracts that the conservator has chosen to confirm;
>
> (h) arrange for the payment of all outstanding administrative expenses as a condition of the plan's approval unless such condition has been waived in writing by a specific creditor;
>
> (i) contain a valid and binding resolution of a meeting of the debtor's shareholders to increase the shares by the required amount in cases where the plan contemplates an additional issuance of shares by the debtor;
>
> (j) include opinion letters of attorneys of the rehabilitation planner certifying that the transactions and arrangements of the plan are consistent with the law.

4. the plan is not rejected by the majority of any class of creditors or shareholders established in the plan.[95]

It appears that the rehabilitation plan now requires a two-step approval process. The first is the requirement for the rehabilitation plan to possess the minimum contents required by the law. If the Court determines that the plan fails to meet the minimal requirements established, it is required to order the return of the plan to its authors for correction and resubmission to the creditors or shareholders for review, if it determines that such non-conformity was not in bad faith and is reasonably curable.[96] While the proposed bill does not provide for the alternative when the non-conformity is due to bad faith or is not reasonably curable, the bill provides that the failure to approve the plan by the Court shall result in a conversion of the rehabilitation into liquidation proceedings.[97]

The second is the requirement of support of the distressed corporation's creditors and stockholders. When a majority of a creditor or shareholder class has rejected the plan, the Court shall convert the rehabilitation to liquidation proceedings.[98]

Currently, the aforementioned bills have not been passed by Congress, but the intention and interest of the Legislature to enact a comprehensive corporate rehabilitation law, whose provisions are identical in proposal and wording as the previous bills, has not waned.

House Bill Nos. 2007 and 3038 were pending in Committees when the 12th Congress transitioned into the 13th Congress. On August 8, 2004, H.B. No. 2073 (The Corporate Recovery Act) was filed by Representative Matias V. Defensor Jr. of the 13th Congress. It is currently pending in the Committee, and bears the same title as H.B. No. 3038 which was filed by Representative Ma. Theresa T. Defensor.[99]

Senate Bill Nos. 208 and 1847 were read separately on the first reading in the Senate and referred to the Committee on Banks, Financial Institutions and Currencies and to the Committee on Ways and Means. The former Committee then returned the Bills with the recommendation that it be substituted by Senate Bill No. 2183. This was sponsored by Senators Angara

95. *Id.* § 80.

96. *Id.*

97. *Id.* § 85.

98. *Id.* § 79.

99. Banking Legislation, *available at* www.philippinebusiness.com.ph/legislation/proposedlaws/banking.htm (last accessed January 31, 2006).

and Enrile and the Members of the said Committee. Senate Bill No. 2183 is an Act Providing for the Rehabilitation on Liquidation of Financially Distressed Enterprises Otherwise known as the Corporate Recovery and Insolvency Act.[100]

VI. CONCLUSION

The Supreme Court, as yet, has not come up with a sufficient body of judicial precedents that will provide a clear path as to how it will interpret that standards provided under P.D. 902-A and the Rehabilitation Rules. The survey undertaken in this essay reveals that there has been but a handful of such cases. By examining other possible sources of illumination, it appears that decisions of the SEC, when it still exercised jurisdiction over corporate rehabilitation proceedings, may provide some guidance for courts. American jurisprudence has evolved a much more mature and sophisticated body of precedents but it is doubtful whether any guidance may be drawn from them.

It is in this area of corporate rehabilitation where a clear path for the courts to take is lacking. With the guidelines and standards biased towards the debtor corporation and calling for little attention to economic and business factors which a legally trained magistrate may not have expertise in, rehabilitation proceedings have been thus far, inadequate to meet the needs of ailing corporations. There has often been a call for more plausible legislation that will address the resolution of corporate recovery cases, but one may wonder whether such legislation will be properly enforced, seeing as Philippine legislation has always leaned towards those who have "less in life." In other words, legislation that is not a "Nash equilibrium" may be ideal, but may not be enforced.

Indeed, the ideal situation is for the legislature to come up with a comprehensive piece of legislation to govern rehabilitation or reorganization proceedings for insolvent debtors.[101] Such a law would not only deter ambiguity in corporate rehabilitation proceedings, it would also serve as a determined guide and standard which commercial courts, that now have jurisdiction over corporate rehabilitation cases, can follow. This would ensure that the current dearth of jurisprudence on the standards for corporate rehabilitation will not adversely affect future rehabilitation proceedings for distressed corporations.

Furthermore, a rational corporate bankruptcy system in place which provides for a real threat of bankruptcy would act as a good pressure upon all

100. *See* List of Bills Filed by the Senate of the 13th Congress as of Jan. 19, 2006 *available at* www.senategov.ph/bills/BillsList.pdf (last accessed Jan. 31, 2006).

101. Villanueva, Corporate Rehabilitation, *supra* note 37, at 238.

stakeholders to enter into earnest efforts and negotiations towards attempting to rehabilitate the petitioning corporation.[102]

Until this can be done, the Supreme Court and the duly designated courts can merely look to their promulgated Rules and Regulations on corporate rehabilitation, which, from their name alone, are merely interim until a comprehensive law can be passed by Congress. This inadequate legislative base hampered the SEC when it had jurisdiction over corporate rehabilitation cases, as it had to evolve varying standards to govern rehabilitation. It will still hamper the courts which now have jurisdiction, as there is a lack of a law to govern these cases.

It is clear that such a situation cannot be allowed to continue as the lack of a definitive statute on corporate rehabilitation, which necessarily entails a lack of clear standards for approval of rehabilitation plans to implement a corporate rehabilitation, has not only hindered rehabilitation proceedings, but will as a consequence, adversely affect the chances of a corporation to recover from a financially-distressed status. Jurisprudence alone has already shown the ambiguity and lack of foresight of the courts that have plagued corporate rehabilitation proceedings due to lack of clear standards.[103]

In short, the Philippines have long needed to modernize and clarify not only its rules for rehabilitation and insolvency but also its philosophical attitude towards arbitrating between the needs of ailing corporations, and those who have stood by the corporation as its stakeholders, whom while seemingly occupying the position of carrions that feast on a carcass, were actually the source of the body's nourishment during its health.

It is with this need in mind that the call for a comprehensive Corporate Rehabilitation Law is made. The legislative void in the field of corporate rehabilitation cannot be countenanced. The SEC, as well as the courts — now being in the frontline of corporate rehabilitation proceedings — should heed the call for the establishment of such a law which shall meet the needs of the stakeholders who have a stake in the ailing corporation.

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102. *Id.*

103. *See* Part III of this article — A Survey of Judicial Precedents on Corporate Rehabilitation.