



Republic of the Philippines
CONGRESS OF THE PHILIPPINES
SENATE

RE : **SPOT REPORT ON THE PUBLIC HEARING CONDUCTED BY THE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, THE CORPORATE RECOVERY ACT (SBN 208 AND 1847) AND THE LENDING COMPANIES ACT (ABN 1103, 1180 AND 1762) HELD ON MONDAY, 13 DECEMBER 2004 AT 1:00 P.M., SEN. LORENZO TANADA, PHILIPPINE SENATE**

I. PRELIMINARY

Senator Juan Ponce Enrile, Vice-Chairman of the Committee on Banks, Financial Institutions and Currencies, promptly commenced the hearing at 1:07 p.m. in lieu of Senator Angara who arrived later. Also present to provide quorum was Senator Rodolfo G. Biazon.

The following persons were in attendance:

Resource Persons	Designation/Office
MR. MELPIN GONZAGA	Deputy-General Counsel Bangko Sentral ng Pilipinas (BSP)
MR. CANDON GUERRERO	Director, Supervision and Examination Department, BSP
MS. JOSELIA POBLADOR	Commissioner, Securities and Exchange Commission (SEC)

Resource Persons	Designation/Office
ATTY. JAY BANAAG	Philippine Stock Exchange
MR. EFREN LEANO	Department of Trade and Industry (DTI)
MR. MICHAEL ANDAYA	Bankers Association of the Philippines
MR. JOSE PERPETUO LOTILLA	Financial Executives Institute of the Philippines (FINEX)
ATTY. MANUEL YNGSON, JR.	Founding Chairman and President, Corporate Recovery and Insolvency Practitioners Association of the Philippines (INSOLPHIL)
MR. JOHN RYAN	Managing Director Transaction Advisory Services, Inc.
ATTY. ERNESTO VILLAGARCIA	National Chairman, Chamber of Lending Investors of the Philippines (CLIP)
MS. ELIZABETH PALER-CRUZ	President Lending Companies Association of The Philippines
ATTY. MIA IMPERIAL-BERNEDO	Quisumbing Torres Law Office
ATTY. TEODORO REGALA	Founding Partner, ACCRA Law Office
ATTY. GILBERTO GALLOS	ACCRA Law Office
ATTY. ROMEO DURAN	Punongbayan and Araullo
MS. YVETTE CHUA	UP Law Center
ATTY. CLARA DE CASTRO	Legal Counsel, Philippine Airlines
ATTY. RENE ATIENZA	Legal Counsel, Bayantel

II. HIGHLIGHTS OF THE MEETING:

1. In his opening statement Atty. Regala of ACCRA commented that entities such as banks, quasi-banks and the insurance companies were excluded from the coverage of the Corporate Recovery Act. Also, he expressed his reservation on the powers granted to the conservator.

2. Atty. Yngson of INSOLPHIL said that there is no legal basis or concept to justify the exemption of government owned and controlled corporations (GOCCs) from the coverage of this law and that the exclusion of banks, quasi-banks, insurance companies

should be extended to include cooperatives since these four entities are governed by laws, other than that of the Corporation Code.

3. Atty. Yngson also explained that although trust entities have similar functions as banks and quasi-banks, they should be treated as ordinary business enterprises since they are not licensed by the Bangko Sentral. He added that the reason for exclusion of banks and quasi-banks is because under the present system, the rehabilitation and receivership of these entities is handled by the Philippine Deposit Insurance Corporation (PDIC) as directed by the Bangko Sentral. As a receiver, the proceedings undertaken by the PDIC is considered to be administrative in nature while as a liquidator the proceedings involved become official.
4. Upon query of Senator Enrile on whether there would be any objections in including banks, quasi-banks and insurance companies under the coverage or jurisdiction of the Corporate Recovery Act, Atty. Yngson stressed that since these entities are imbued with special public interest more than the interest involved in ordinary corporations, it would be much preferable to have them covered by a special law instead. He explained that when a bank becomes insolvent, unlike ordinary corporations, which only have the stockholder and traders, more people such as the depositors are affected and should be taken into consideration. While for insurance companies, the law requires the creation of a fund to ensure the continued service of the insured amount to their clients just in case of insolvency.
5. Mr. Banaag of the Philippine Stock Exchange emphasized on the need for the inclusion of licensed securities market participants such as the brokers and dealers in the coverage of the Corporate Recovery Act.
6. Upon query by Senator Enrile on the exclusion of these entities from the proposed bills, Commissioner Poblador of the SEC said that the SEC has no strong position to exclude securities market participants from the Corporate Recovery Act. She however commented that from the perspective of the SEC, the exclusion of the various entities from the coverage of the Corporate Recovery Act is based on the recommendations made by the Capital Market Development Council (CMDC).
7. In response to the question posed by Senator Enrile on whether the Social Security System (SSS) and Government Service Insurance System (GSIS) fall under the coverage of the law, Atty. Yngson said that until there is a new bill to cover their insolvency, these entities would be covered by the Corporate Recovery Act. He stressed

however, that although having only one law to govern bankruptcies, insolvencies and rehabilitation proceedings may seem to be a conceptually good idea, it is better to have multi-legal systems because the inclusion of cooperatives in the coverage of the bill may cause the courts to be clogged with cooperative proceedings.

8. According to Senator Enrile cooperatives should be included under the coverage of the Corporate Recovery Act. In support of his argument he cited the case of the power cooperatives, which under the Electric Power Industry Reform Act (EPIRA) are allowed to become stock corporations.
9. As to the liability of directors and officers of liquidating corporations, the Bangko Sentral proposed that the directors and officers should be held liable to the extent of unpaid claims of their creditors regardless whether the value of claims exceeds the value of its improperly distributed assets.
10. On the issue of preference in credit, Senator Enrile voiced his dissent over the definition of secured creditors in the proposed bills because this does not include the holders of trust receipts. He then stressed that the holder of the trust receipt should have first claim to the proceeds of the goods covered. Mr. Ryan of Transaction Advisory Services Inc. expressed support to this proposal
11. Upon query by Senator Enrile on whether Congress has the right to impair a corporation's obligation in favor of its secured creditors, Atty. Yngson said that the whole concept of insolvency laws is anchored on police power. He added that in addressing insolvency situations there is no alternative but to suspend contractual rights and obligations. Senator Enrile expressed concern over Atty. Yngson's statements and asked to be provided documents in support of his argument.
12. Senator Enrile questioned the purpose of the proposal to grant insolvent companies the right to apply for a stay-order period or a period under which the secured creditors cannot enforce their rights over the collaterals. In response, Atty. Yngson said that during this period the creditors are not deprived, for their rights are only suspended until liquidation of the corporation. He added that this approach would grant ailing corporations protection while undergoing rehabilitation since they still possess their assets. He then pointed out that the justification for this method is the public interest under the concept of police power.

13. Mr. John Ryan of Transaction Advisory Services Inc. said that his main concern for the proposed bills on the Corporate Recovery Act is to ensure that it provides banks protection while undergoing rehabilitation. He also said that presently the cost of credit compared to other parts of Southeast Asia is higher because of the lack of protection undergoing suspension of payments.

He relayed that his concern focuses primarily on the medium-sized businesses, which constitutes ninety-five percent of the country's job market, because these establishments are unable to properly borrow from banks for the security they lend to banks, are working capital assets and all payments have no protection. To address this predicament the Corporate Recovery Act should protect the value of the security to allow banks to lend at efficient amounts in normal credit terms.

14. Atty. Yngson commented that it is necessary for a time limitation to be placed in the process of liquidation to prevent the abuse of the stay-order period. He also said that the limitation would expedite the process as well as make the delay in the exercise of the rights of the secured creditors less painful. He then stressed that the Corporate Recovery Act should have more provisions covering liquidation because although the proposed bills enumerates liquidation as a remedy, it is not clearly identified.

15. Upon query of Senator Enrile on the procedure on the filing of petitions for rehabilitation by creditors, Atty. Yngson said that the proposed bills on the Corporate Recovery Act should exclude all procedural matters and leave these at the discretion of the courts. He also strongly recommended that the Corporate Recovery Act should cover only the substantive rights and obligations of the parties involved and also that an inter-agency technical working group be formed for the purpose of revising the legislative measure.

16. Atty. Regala of ACCRA Law Office said that insolvency is not defined under any present laws. He said that for the Corporate Recovery Act to initiate voluntary or involuntary proceedings two concepts should be used to determine insolvency: 1.) The balance sheet test under which the debtor's assets should be less than its liabilities and 2.) The equity test of the United States, which defines insolvency as a "situation where the debtor is unable to pay its debts as they become due"

17. Senator Enrile stressed that there are three principles the Committee intends to achieve through the Corporate Recovery Act. First, is to maximize the opportunity for ailing corporations to survive for their closure would not help the public in general. Second, is to minimize juridical intervention in the rehabilitation or liquidation procedure as well

as encourage voluntary rehabilitation. Lastly, is to determine the acceptable mode of appraisal in the disposal of assets in case of liquidation.

18. Atty. Regala expressed support to the position made by Mr. John Ryan on the protection of secured creditors. Atty. Regala commented that although it seems that there are many provisions in the proposed bills in favor of the secured creditors by allowing them to move from one proceeding to the other, there is no provision in the proposed Corporate Recovery Act which says that the secured creditors claims will be settled or maintained in full

19. Atty. Regala noted that there is no merit in adopting the proposal for fast track rehabilitation. Also, he said that it is a misnomer since the duration of fast track rehabilitation is about one hundred and thirty days. He disclosed that the problem with the proposed bills is that the authors envisage that the fast track rehabilitation as a proceeding initiated by the debtor, when in fact under the fast track scheme, a subsidiary is formed and the assets of the ailing corporations are transferred to the subsidiary. The stockholders of the previous corporation are completely excluded except when they are willing to buy twenty percent of the new company. He then recommended that pre-negotiated rehabilitation or court supervised rehabilitation be made alternative options.

20. Atty. Yngson said that there are certain elements which are necessary to make a court supervised rehabilitation possible. First, a specialized commercial court needs to be established with a judge that is knowledgeable on the rules and laws covering rehabilitation and liquidation. Second, requirement is that there must be professional receivers or liquidators, Atty. Yngson recommended that apart from his normal occupation these persons should be duly licensed or certified to practice by the government. Lastly, there is a need to determine which corporate rehabilitation procedures are to be adopted, that of the SEC or the Interim Rules on Procedure on Corporate Rehabilitation which is being implemented by the courts.

Atty. Yngson also highlighted the need to strengthen pre-negotiated rehabilitation with substantive provisions.

III. FURTHER INSTRUCTIONS:

1. Mr. Yngson was instructed by Senator Enrile to submit to the Committee jurisprudence, which justifies the intrusion of police power into the non-impairment clause of the Bill of rights. He was also instructed to provide materials to justify the inclusion of a stay-order period in the bill.

2. Senator Angara proposed that a five-man technical working group be formed to study new proposals and draft new provisions for the Corporate Recovery Act. He assigned Commissioner Poblador of the SEC to determine the members working group and submit a list of names to the Committee
3. Senator Enrile then directed the technical working group to draft a consolidated copy of the bill, by removing all procedural aspects and dealing mainly on the following:
 - a.) The grounds upon which the Corporate Recovery Act will operate and
 - b.) The rights of the creditors depending on whether the nature of the enterprise undergoing rehabilitation is a single proprietorship, a partnership or a corporation
4. Senator Enrile asked the technical working group to draft the rules governing rehabilitation and liquidation. He advised them to be divide and deal with these situations separately under the context of the proposed law
5. According to Senator Angara, aside from availing rehabilitation another alternative, which insolvent corporations may avail of, is the merger with existing viable companies. Though the SEC expedites the process of a merger, he directed the technical working group to devise other incentives that can be offered to the absorbing corporation.

IV.ADJOURNMENT:

The Chair requested that the position papers requested by the Committee from Atty. Yngson and the names of the technical working group be submitted by Friday (December 17, 2004) and thereafter adjourned the meeting at 3:00 p.m.

Committee Secretary: Patricia S. Sarmiento