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The Personal Equity and Retirement Account (PERA) Act of 2008



President Arroyo recently signed the Personal Equity and Retirement Account (PERA) Act of 2008 into law. Republic Act (R.A.) No. 9505 allows the creation of tax-free personal retirement accounts and aims to promote a culture of savings among self-employed individuals, entrepreneurs, and overseas Filipino workers who usually are not covered or required by law to be members of the Social Security System (SSS). With the PERA, the country's savings rate of 19 to 23% of gross domestic product (GDP) is projected to increase to the level of Malaysia, Singapore and Vietnam, which is between 34 to 40% of the GDP. The boost in the savings rate is expected to spur economic growth with the mobilization of more capital for investments which will create more businesses and more jobs.

Under the law, a contributor or any person with the capacity to contract and possess a tax identification number may make an aggregate maximum contribution of P100,000, or its equivalent in any convertible foreign currency to his PERA annually. If the contributor is married, each of the spouses shall be entitled to make a maximum contribution of P100,000 or its equivalent in any currency at the prevailing exchange rate. Overseas

Filipino workers are allowed to a maximum contribution of P200,000 a year. All income, interest, and dividends from investment and reinvestment earned by these accounts — similar to 401(k) pension schemes in the United States — will be tax-exempt provided the account owner or contributor does not withdraw the funds before the age of 55 and has made contributions to the PERA for at least 5 years. The distribution of PERA benefits upon maturity shall also be tax exempt.

The law also gives the contributor an income tax credit equivalent to five percent of his total PERA contribution. If the PERA contribution exceeds the amount prescribed by law, the excess shall not be entitled to the tax credit.

Contributors can open up to five accounts but with only one administrator, which can be a bank, a financial company or other entities accredited by the Bureau of Internal Revenue (BIR). The fund should be invested only in qualified PERA investment products which may be a unit investment trust fund, a mutual fund, an annuity contract, an insurance pension product, a pre-need pension plan, shares of stock and other securities listed and traded in a local stock exchange, exchange-traded bonds, or other

approved investment products and outlets. Employers can contribute to their employees' accounts as long as they pay the required SSS premiums and comply with the requirements for retirement pay under the Labor Code. Distributions can be either in lump sum or a pension for a definite period or for a lifetime.

The account owner may choose to continue his PERA even beyond the age of 55, but complete distribution will be made upon the death of the contributor regardless of age. Early withdrawals will be subject to a penalty, except in cases when the contributor is totally disabled or hospitalized for more than a month due to an accident or illness.

The law provides that the Finance Secretary may adjust the maximum contribution from time to time after considering the Consumer Price Index, the fiscal position of the government, and other pertinent factors. The Department of Finance (DOF), Bureau of Internal Revenue (BIR), Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), and the Insurance Commission are currently drafting the implementing rules. **11**

Rehabilitation, Suspension of Payments, and Insolvency Proceedings in the Philippines

In Italy, the first bankers transacted and exchanged money in a bench situated in public areas such as markets and plazas. These benches were originally referred to as "the bank", in reference to the Latin word for bench (*bankus*, meaning bench or table). When a banker failed, he broke his bank to notify the public that the person who owned the bank was no longer in a condition to continue his business. This interesting practice gave birth to the term "bankruptcy", a word which strikes fear in the heart of every corporate officer, creditor and stockholder. But with the passage of laws and guidelines that would address the legal and financial concerns in bankruptcy or insolvency, other options can be pursued other than simply announcing to the world that the company is unable to pay its debts.

The fate of a financially distressed corporation in the Philippines, whether it goes out of business or reorganizes in order to recover from crippling debt, is determined largely by the remedies and procedures provided under applicable laws such as the Insolvency Law (Act No. 1956), the SEC Reorganization Act (Presidential Decree No. 902-A), and the rules for corporate rehabilitation under Administrative Matter (A.M.) No. 00-8-10-SC. In the face of the financial crisis in the US and its threat to the Philippine economy and business, this article provides a brief description and the distinguishing characteristics of each procedure.

Suspension of Payments under Act No. 1956

Under suspension of payments, the debtor possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due. The proceeding involves a petition filed in the designated Regional Trial Court (RTC) for the postponement of the payment of debts pending the approval of a proposal or agreement with its creditors. Upon receiving the petition, the judge shall issue an order calling a meeting of the creditors and forbidding the corporation from disposing its property, or from making any payment of whatever nature, except in the ordinary course of the corporation's business or industry. During the pendency of the application, the creditors cannot sue or institute any proceeding to enforce the payment of any claims against the corporation.

Two thirds of the creditors voting in a meeting called for the purpose must approve the debtor's proposal, and the claims represented by said creditors must amount to at

least three fifths of the total liabilities of the debtor mentioned in the petition. If the vote is attained, the court shall order the proposition to be carried out. On the other hand, the debtor's proposal shall be deemed rejected if the number of creditors required for holding the meeting did not attend, or if the required number for approval was not obtained. The proceeding shall be terminated without recourse and the creditors shall be at liberty to enforce their respective claims against the corporation.

Insolvency under Act No. 1956

Insolvency proceedings are filed when a debtor does not have enough assets and properties to cover all his obligations. A petition for voluntary insolvency may be filed by a corporate debtor with liabilities exceeding P1,000.00 in the RTC of the city or province where it has resided for 6 months preceding the filing of the petition. The debtor must not have committed an act of insolvency prejudicial to the interests of the creditor. On the other hand, a petition for involuntary insolvency may be filed by 3 or more creditors who feel that their interests should be protected against acts of insolvency being done by the corporate debtor. The court issues an order forbidding the payment of any debt due to the petitioning corporation, the delivery of any property belonging to the corporation, and the transfer of any property by the petitioning corporation. Upon the issuance of said order, all civil proceedings pending against the insolvent corporation shall be stayed. The debtor's assets are placed under the custody of the receiver or assignee in insolvency appointed by the creditors or by the court. While the order stays all actions, it is expressly provided that the corporate debtor is not entitled to a discharge, as both present and future properties are answerable for the corporation's obligations.

Insolvency proceedings compel the presentment of all debts, whether due or not due in order to secure a complete discharge from such debts. As a result thereof, creditors may receive less than what they are entitled to, and in cases where preferences are proper, some creditors may receive nothing. In contrast with suspension of payments, the amount of indebtedness is generally not affected although there is a delay in the payment of debts.

Suspension of Payments under Presidential Decree (P.D.) No. 902-A

Pursuant to Section 5.2 of the Securities Regulation Code (Republic Act No. 8799), the

designated RTC special commercial courts have exclusive jurisdiction over the petition of a corporation to be declared in a state of suspension of payments when it possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they fall due, or in cases where the corporation has no sufficient assets to cover its liabilities but is placed under a management committee or rehabilitation receiver. The two types of suspension of payments proceedings under the Insolvency Law and P.D. No. 902-A are distinguished by the following: (1) the suspensive effect of the proceedings under the Insolvency Law generally expires after three months in the absence of any agreement among the creditors while the suspensive effect of the proceedings under P.D. No. 902-A is not time bound and may last as long as the corporation is under the management committee or rehabilitation receiver, and there is no order for liquidation of assets; and (2) the final agreement for the settlement of obligations in the proceedings under the Insolvency Law require the qualifying majority vote of the creditors while there is no need of obtaining the approval of the creditors for proceedings under P.D. No. 902-A because the management committee or rehabilitation receiver may approve and undertake the necessary measures to rehabilitate the ailing corporation.

Corporate Rehabilitation

Corporate rehabilitation is pursued by the



debtor who possesses sufficient property to cover its debts at the time that they fall due, but its properties are illiquid and can be turned into cash under a plan that it submits to the court for approval. A petition for rehabilitation is a special proceeding filed in the RTC having jurisdiction over the territory where the debtor's principal office is located. It may be voluntary in nature when the debtor, singly or jointly with its creditors, files a petition. It may also be involuntary when creditors

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