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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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Guidelines and Procedures on the Use of Corporate and Partnership Names

The Securities and Exchange Commission (SEC) promulgated Memorandum Circular No. 5 on July 17, 2008, which took effect on August 9, 2008, in order to update the guidelines and procedures in the registration of corporate and partnership names.

The Circular includes the following guidelines, among others:

- The corporate name shall contain the word "Corporation" or "Incorporated", or the abbreviations "Corp." or "Inc.";
- The partnership name shall bear the word "Company" or "Co.", and if it is a limited partnership, the word "Limited" or "Ltd.";
- A professional partnership name may contain the words "Company," "Associates," "Partners," or other similar descriptions;
- A term that describes the business of a corporation in its name should refer to its primary purpose. If there are two such terms, the first should refer to the primary purpose and the second to the secondary purpose;
- The name shall not be identical, misleading or confusingly similar to a corporate or partnership name registered with the Commission, or with the Department of Trade and Industry;
- A name that consists solely of special symbols, punctuation marks or specially designed characters shall not be registered;
- Only one business or trade name may be registered for each corporate or partnership name;
- A tradename or trademark registered with the Intellectual Property Office may be used as part of the corporate or partnership name of a party other than its owner if the latter gives its consent to such use;

- The name of an internationally known foreign corporation, or something similar to it, cannot be used by a domestic corporation unless it is the subsidiary and the parent corporation has consented to such use;

- A subsidiary or affiliate of a foreign corporation that applies for the registration of all or substantially all of the name of its parent company shall use the word "Philippines" as part of its name which shall be written as "(Philippines)" or "(Phil.)" after the name;

- The name of a local geographic unit, site or location cannot be used as a corporate or partnership name unless it is accompanied by a descriptive word or phrase;

- The practice of a profession regulated by a special law which, among others, provides for the permissible use of the profession's name in a firm, partnership or association shall govern the use of the name, e.g. "Engineer" or "Engineering" (R.A. 1582), "Architect" (R.A. 9266), or "Geodetic Engineer" (R.A. 8560);

- The SEC shall disallow the use of names that in its judgment are misleading, deceptive, confusingly similar to a registered name, or contrary to public morals, good customs, or public policy; and

- At the time of its registration, a corporation or partnership shall submit an affidavit signed by at least two incorporators containing an unqualified undertaking to change its name immediately upon receipt of the notice or directive from the Commission that another corporation, partnership or person has acquired a prior right to the use of the name or that the name has been declared as misleading, deceptive or confusingly similar to a registered name, or contrary to public morals, good customs or public policy. The affidavit shall not be required if the undertaking is already included as one of the provisions of the Articles of Incorporation or Partnership of the registrant. **11**

Exemption of Interest on Long-Term Deposits

Bureau of Internal Revenue (BIR) Ruling No. DA-294-08 upheld the principle that the interest income from long-term deposits or investment certificates is exempt from tax, if received by individual investors. The exemption on the interest income of the individual applies regardless of the terms of the investment or maturity of the instrument in which the trust fund is invested. The fact that the individual's money is invested in a trust

fund managed by a bank and stays there for not less than five years already fulfills the intention of the law.

A long-term deposit or investment certificate refers to certificate of time deposits or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments with a maturity period of not less than five years. The form of investment shall be prescribed by the Bangko Sentral ng Pilipinas (BSP) and issued by banks only to individuals in denominations prescribed by the BSP. **11**

Small Scale Miners to Pay Excise Tax

Under Revenue Regulation No. 07-2008, the Bangko Sentral ng Pilipinas (BSP) was designated as the collecting agent for the 2% excise tax from small-scale miners. This is in addition to the 10% creditable withholding tax on income payments made to small-scale miners on the BSP's purchase of gold and other metallic mineral products.

Under Republic Act (R.A.) No. 7076 or the People's Small Mining Act of 1991, all gold produced by small-scale miners are required to be sold to the BSP or its duly authorized representatives at a price competitive in the world market regardless of their volume or weight. Under the regulations, the excise tax collected by the BSP shall be remitted or paid on or before the 10th day of the following month.

The regulations require the BSP to indicate the phrase "Gold miners/suppliers under P.D. 1899, as amended by R.A. 7076" (in lieu of the individual names and TINs of the gold sellers), the tax base, and the amount withheld as a one-line item in the monthly remittance return of creditable withholding taxes. The withholding tax return is required to be filed and paid within ten days after the end of month, except for those withheld for the month of December, which shall be filed on or before January 15 of the following year. **11**

New Procedures for the Filing of Annual Financial Statements

The Securities and Exchange Commission (SEC) adopted new measures in the filing of the financial statements (FS) of companies whose fiscal year ends on December 31, 2008. SEC Memorandum Circular No. 7 provides the following guidelines, among others:

1. All corporations; including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, that file their FS at the SEC's head office shall follow the filing schedule as identified by the last numerical digit of the SEC registration or license number:

- April 20 to 24: "1" to "3"
- April 27 to 30: "4" and "5"
- May 4 to 8: "6" to "8"
- May 11 to 14: "9" and "0"

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Karl Castillo, Partner



The Firm recently announced the admission of Karl Arian A. Castillo to the Partnership, effective September 15, 2008. Karl joined the Firm as an associate in April 2002 after his admission to the Bar in the same year. He represents Philippine and foreign clients in various criminal and civil cases before quasi-judicial agencies and the courts such as the Regional Trial Courts, the Court of Appeals, and the Supreme Court. Karl Castillo has a degree in B.A. Political Science from the University of the Philippines and a J.D. from the Ateneo School of Law.

With the admission into partnership of Karl Castillo, the Firm now has three senior partners and four junior partners. **LF**

Sig Fortun Elected Red Cross Makati Director



Sig Fortun was recently elected director of the Philippine National Red Cross (Rizal Chapter) Makati Branch. He joins 8 other businessmen and professionals in the Board to administer the Red Cross functions of alleviating human suffering through its programs covering blood services, disaster management, safety services, community health and nursing, social services, and volunteer services. The Makati Branch seeks to serve the City's 8 Million residents, and have at least 40% of them blood-typed and ready to donate blood when requested to do so during emergencies. Fortun is current station commander of his village Fire & Rescue Corps, and is a trained first aider and rescuer. **LF**

FNSC Bar Review And Pre-Week Bar Institute

Expanding its services to help aspiring law graduates pass the Supreme Court-administered Bar Examinations, FNS Corporation organized a 5-month intensive Bar Review program in Baguio City starting last March. In cooperation with R.A. Gapuz Review Center which provided the seminar facility, FNSC had 150 enrollees in its program which featured the best law professor-reviewers from Manila. To cap the activity and prepare its reviewees for the grueling 4-week

exam, FNSC conducted a pre-week bar institute featuring a crash course on salient features of the 8-subject examinations, again with the best and brightest lecturers facilitating the review. The pre-week course was held at Gapuz's review school at SM Manila behind the Manila City Hall. This year's Bar exams started on September 7 and will run for 4 Sundays ending September 28. FNSC continues to conduct Mandatory Continuing Legal Education seminars for lawyers. Its 28th session will be held at the Ayala Tower 1 Executive Lounge on October 16, 17, 23 and 24. FNSC is one of the foremost providers of quality continuing education for lawyers, accredited by the Supreme Court in 2005. **LF**

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owning at least 25% of the debtor's liabilities initiate the proceedings. If the court is convinced that the petition is sufficient in form and substance, it will issue a Stay Order, which shall include, among other things, the appointment of a receiver and the suspension of all pending claims against the corporation under rehabilitation.

In rehabilitation, the court has absolute power to approve or disapprove the rehabilitation plan. It does not need the consent or conformity of the creditors, and may enforce the implementation of the approved plan over the opposition or objection of the creditors. This distinguishes rehabilitation from suspension of payments where the approval is made by the creditors who represent three fifths of the liabilities held and two thirds of the creditors voting in the meeting. In rehabilitation, the debtor continues to do business pursuant to the court-approved rehabilitation plan subject to the oversight and monitoring authority of a rehabilitation receiver. In insolvency, the creditors take over the properties of the insolvent debtor and payment of the indebtedness discharges the debtor from its obligations. Furthermore, under rehabilitation, all creditors stand on equal footing and are required to queue up for the payment of their claims. But in insolvency, preferences of credit are respected. The secured creditors may choose not to participate in the proceedings, and if they choose to enforce their claims on the properties of the insolvent, the unsecured

creditors may not be paid any amount at all.

Encountering financial distress is a reality embedded in doing business. While there are remedies and procedures provided under Philippine laws, it is essential that good management and governance practices in each organization are in place so that the early signs of financial woes will be detected, monitored, and addressed properly. It is also key that bankruptcy law regimes be continuously updated and reengineered with changes and developments in the business environment and capital market so that an effective legal framework is always in place. **LF**

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2. Corporations whose fiscal year ends on a date other than December 31, 2008 shall comply with their original filing schedule;
3. Prior to April 20, 2009, all corporations may file their FS regardless of the last numerical digit of their registration or license number;
4. Late filings shall be accepted starting May 15 and shall be subject to the prescribed penalties which shall be computed from the date of the last day of the filing schedule stated above; and
5. Requests for extension of time to file the FS or notifications of inability to file SEC Form 17-A shall not be accepted. **LF**

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