

CLIENT ADVISORY BULLETIN NO. 2020-004 (Suspension of Payments and Rehabilitation for Individuals)

May 12, 2020

Gentlemen/Mesdames,

The COVID-19 outbreak, and the resulting Enhanced Community Quarantine (ECQ), which has now been extended until May 15, 2020, has caused a considerable strain on the economy and to business owners. Most businesses have had no income during the ECQ, but still continue to incur operational expenses. The *Bayanihan To Heal As One Act*¹ and other government issuances have provided for a temporary reprieve on commercial obligations, but this may not be enough for business owners as they still face the reality of having to meet these obligations post-ECQ.

Fortunately, with the enactment of the *Financial Rehabilitation and Insolvency Act (FRIA)*², a business owner may avail of certain reliefs under the law, that can help cushion the impact of these commercial obligations.

For this Client Advisory Bulletin, we will strictly discuss the provisions pertaining to individual business owner, i.e., **sole proprietorship**. The relevant discussion on corporate business owners will be the subject of a subsequent Client Advisory Bulletin.

Suspension of Payments

Under this form of relief, an individual business owner (debtor) who, possessing sufficient property to cover all his debts but foreseeing the impossibility of meeting them when they fall due, may file a verified Petition that he be declared in a state of suspension of payments, by the court of the city or province in which he was a resident for six (6) months prior to the filing, attaching the following: (a) *Schedule of Debts and Liabilities*, (b) *Inventory of Assets*, and (c) *Proposed Agreement with Creditors*.³

If the court finds the Petition sufficient in form and substance, it will issue an Order calling for a meeting of all creditors named in the Schedule and prohibiting the debtor from making any payments outside of the necessary or legitimate expenses of his business⁴, among others.

¹ Republic Act No. 11469.

² Republic Act No. 10142.

³ Section 94 of FRIA Law.

⁴ Section 95 of FRIA Law.

The individual business owner may also move for the issuance of an order from the court suspending any pending execution, *except* for properties held as security of secured creditors. This suspension shall lapse when three (3) months have passed without the Proposed Agreement being accepted by the creditors or as soon as such agreement is denied.⁵

During the pendency of the Petition, no creditor shall sue or institute proceedings to collect his claim from the debtor from the time of the filing of the Petition and for as long as proceedings remain pending *except*: (a) those creditors having claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of the debtor incurred in the sixty (60) days immediately prior to the filing of the petition; and (b) secured creditors.⁶

At the meeting of the creditors, where at least three-fifths (3/5) or sixty percent (60%) of the liabilities must be present, the Proposed Agreement of the individual business owner will be voted upon for approval. No creditor who incurred his credit within ninety (90) days prior to the filing of the Petition shall be entitled to vote.⁷ If the Proposed Agreement is approved by a majority⁸ of the creditors, or any amendment thereof is upheld by the court, the latter shall order that the agreement be carried out and all parties bound thereby.⁹

Liquidation

What if the individual business owner, however, does not have sufficient property to cover his debts and liabilities?

a. Voluntary Liquidation

In such a situation, the individual business owner, with debts exceeding Five Hundred Thousand Pesos (₱500,000.00), may apply to be discharged from his debts and liabilities by filing a verified Petition with the court of the province or city in which he has resided for six (6) months prior to the filing of such petition, attaching: (a) a **Schedule of Debts and Liabilities**, and (b) an **Inventory of Assets**¹⁰. If the court finds the Petition to be sufficient in form and substance, it shall issue a **Liquidation Order**.¹¹

⁵ Section 96 of FRIA Law.

⁶ *Ibid.*

⁷ Section 97 of FRIA Law.

⁸ At least two-thirds (2/3) of the creditors voting unite upon the same proposition and the claims represented amount to at least three-fifths (3/5) of the total liabilities of the debtor.

⁹ Section 101 of FRIA Law.

¹⁰ Section 103 of FRIA Law.

¹¹ Section 104 of FRIA Law.

b. Involuntary Liquidation

Similarly, any creditor or group of creditors with a claim of, or with claims aggregating at least Five Hundred Thousand pesos (₱500,000.00) may file a verified Petition for liquidation with the court of the province or city in which the individual debtor resides, alleging, among others any act of insolvency, as provided for by law.¹² A **Liquidation Order** shall be issued by the court if the debtor shall be in default or, if after trial, the issues are found in favor of the petitioning creditors.¹³

c. Liquidation Order

The **Liquidation Order** so issued, whether in the case of voluntary or involuntary rehabilitation, shall, among others: (a) result in legal title to and control of the assets of the debtor, except those exempt from execution, vested in the liquidator or, pending his appointment, with the court; (b) all contracts of the debtor shall be deemed terminated and/or breached; and (c) no foreclosure proceeding shall be allowed for a period of one hundred eighty (180) days.¹⁴ Bear in mind, however, that the **Liquidation Order** shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law.¹⁵

We trust and hope that you will find the above to be helpful and of use to you. As mentioned, a subsequent Client Advisory Bulletin will follow discussing, this time, the pertinent provisions of the FRIA Law on corporate business owners.

Should you have any questions regarding the foregoing, please let us know.

Keep safe.

Thank you very much.


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¹² Section 105 of FRIA Law.

¹³ Section 107 of FRIA Law.

¹⁴ Section 113 of FRIA Law.

¹⁵ Section 114 of FRIA Law.