

Philippines: PSE expects more foreign investments in 2009 with SC's approval of Rules on Corporate Rehabilitation.

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Section: Investment - Foreign investors are seen to look at the Philippines for potential investments despite the economic downturn, an official of the stock market said.

Francis Lim, president and CEO of Philippine Stock Exchange (PSE), said the recent approval of the 2008 Rules of Procedure on Corporate Rehabilitation by the Supreme Court is expected to encourage more foreign investments especially with the major improvement in the recognition of foreign re-organization or rehabilitation proceedings which covers cases whereby assistance is sought in a Philippine court by a foreign court or representative, or assistance is sought in a foreign state in connection with a domestic proceeding, or a foreign proceeding and domestic proceedings are concurrently taking place.

The new rule on foreign proceedings elevates our rehabilitation rules to global standards as it is almost a verbatim copy of the UNCITRAL model rules on recognition of foreign insolvency proceedings. This rule is intended to make our country attractive to foreign investors. A modern set of bankruptcy law is a big factor being considered by foreign investors when making investment decisions. This was amply demonstrated by our CaLPERS experience where the Philippines was almost delisted as an investment-grade country partly because of our archaic and outmoded bankruptcy law, which was enacted way back in 1909, pointed out Mr. Lim.

The 2008 Rules of Procedure on Corporate Rehabilitation replaces the Interim Rules of Procedure on Corporate Rehabilitation approved by the Supreme Court way back in 2000. The new rules will take effect January 16, 2009.

The new rule on foreign proceedings may play a critical role amidst the present financial meltdown in which we see foreign companies undergoing re-organization proceedings (like Chapter 11) in foreign countries. These companies may have assets in the Philippines. Conversely, there may be domestic companies undergoing rehabilitation proceedings in the Philippines with assets located abroad. The new rule, which is based on international best practices, is envisioned to cover such situations, Mr. Lim noted further.

The new rules seek to improve and expedite the court procedures for petitions for rehabilitation or re-organizations of corporations, partnerships and associations in order to help debtors recover from financial difficulties while at the same time attempting to ensure fair treatment of creditors.

Lim said the passage of the new rules is perfectly timed as some of our companies may encounter financial difficulties as a result of the ongoing global recession. It is therefore important that our bankruptcy system is ready to help our companies get back on their feet if they find themselves in such a situation.

The new rules will be the counterpart of Chapter 11 proceedings in the United States pending passage by Congress of a more comprehensive bankruptcy law to replace our 1909 Insolvency Act, Mr. Lim said further.

Congress has been working on the Corporate Recovery and Insolvency Act or CRIA, which is one of the capital market-related laws being advocated by the PSE.

One major change being introduced by the Supreme Court is a new rule governing pre-negotiated rehabilitation plans. Under the rule, if the plan is approved by creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more

than 50% of the total secured claims and unsecured creditors holding more than 50% of the unsecured claims, both parties can go to court for approval of the plan. The court is then given a maximum of 120 calendar days from the date of filing of the petition to make a decision on the petition. If the court fails to do so within the period, the rehabilitation plan shall be deemed approved, Mr. Lim explained.

As far as ordinary petitions for rehabilitation are concerned, the new rules give the court a maximum period of one year to approve or disapprove the petition. The new deadline is intended to avoid delay in the disposition of rehabilitation cases, which has proven detrimental to the interest of both the debtor and its creditors.

The rules were drafted by a committee of the Supreme Court with the assistance of private sector representatives which includes the Philippine Stock Exchange. - PNA

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