

**Enhanced Governance through Judicial Sector Reform in the Philippines/
Increasing Judicial Efficiency to Promote Economic Development in the
Philippines**

**Cooperative Agreement No. AID 492-00-09-00026-00
FINAL REPORT**

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I. INTRODUCTION

The “Enhanced Governance through Judicial Sector Reform in the Philippines” Project (hereinafter referred to as the “Judicial Sector Reform Project”) is a three- year program initiated in the Philippines from October 1, 2009 through September 30, 2012. The Project’s three overarching goals are to:

- (1) increase access to justice;
- (2) improve the efficiency of the courts; and
- (3) enhance integrity and accountability in the justice system.

On September 30, 2011, USAID and ABA ROLI entered into a subsequent and supplemental agreement to further deepen and expand key judicial reform program components during the third year of implementation of the Judicial Sector Reform Project. This supplemental program is entitled “Increasing Judicial Efficiency to Promote Economic Development in the Philippines” (hereinafter referred to as the “PFG Bridge Project”).

This Report assesses accomplishment of committed results under both projects based on the integrated implementation approach assumed by ABA ROLI. The PFG Project builds on efforts and uses learnings during the implementation of the Judicial Sector Reform Project. As such, its projects are seamlessly related to most of the projects of the Judicial Sector Reform Project. Project components from both projects are expressed in the succeeding results framework provided under this report.

II. SOCIO-POLITICAL CONTEXT

ABA ROLI implemented reforms under the project despite surmounting issues faced by its main proponent, the Supreme Court.

In 2010, the promotion of Justice Renato Corona to Chief Magistrate of the Supreme Court and the retirement of his predecessor, Chief Justice Reynato Puno, created instability among the key judicial officials and agencies. As the judiciary and its committees restructured, ABA ROLI continuously worked with the Court Administrator, the relevant TWG chairs and directors, and new staff to minimize disruptions in program activities. The appointment of Judge Geraldine Faith Econg as the Director of the Program Management Office (PMO) presented both opportunities and challenges to ABA ROLI’s workplan. Judge Econg, who has long been supportive of ABA ROLI projects, is a hardworking leader and a fitting choice for this office, which coordinates all of the judiciary’s

donor-related activities. However, while the office lay dormant for almost 18 months after the resignation of her predecessor, many of its duties and responsibilities were assumed by other offices within the judiciary. As PMO re-establishes itself as the primary coordinator of donor activities, some friction has built up within the judiciary. ABA ROLI continues to remain neutral and is committed to working with all offices to pursue the workplan program objectives submitted to USAID, which were developed in collaboration with judicial officials prior to the personnel changes.

The approval of the Whistleblowing rule and the IDP remain pending before the Supreme Court since 2010 with no indication that a decision will be forthcoming. ABA ROLI recommended therein that the SIJ support component of its judicial reform workplan be amended to focus on other integrity issues within the justice sector, including support to the Department of Justice, National Prosecution Service among others.

The impeachment of the former Chief Justice Corona and the trial that followed in 2011 created unexpected and formidable obstacles for many of the programs under this Cooperative Agreement. During the Senate trial of Chief Justice Corona, high level judicial officials, responsible for assisting ABA ROLI with policy decisions and for issuing work orders to technical staff of the courts, were distracted and wary of taking action on necessary items. This leadership vacuum affected all institutions of the judiciary, including the Office of the Court Administrator (OCA), with whom ABA ROLI works the closest. This was due in part to the National Court Administrator serving as the Director of the Public Information Office during a period of extremely heightened press scrutiny of the judiciary. It also negatively affected the ability of the Program Management Office (PMO), the agency vested with the responsibility to coordinate donor reform efforts, to help ABA ROLI make progress on its judicial support programs.

Nonetheless, ABA ROLI was able to make significant progress on the programs under this Cooperative Agreement by courting requests through subordinates and relying on the relationships we have established with key personnel at the courts. Some of the most significant impediments were either attributable directly to the lack of leadership and the hesitancy by other office chiefs to act during the impeachment, or to inaction caused by complicated decision-making and budget allocation processes that perpetually vexes progress on court reform efforts.

Efforts towards improving capacities in the Department of Justice were hampered due to lack of commitment to pursue particular reforms introduced under the Project. The technical assistance offered by ABA ROLI towards the operationalization of the DOJ's Office for Competition (OFC), created in 2011 was refused by Assistant Secretary of Justice Geronimo Sy. Under these circumstances, ABA ROLI was not able to fully provide its committed support for the institution. Despite this, ABA ROLI pursued other projects with the DOJ in 2012 and resumed its otherwise smooth collaborative relationship with the Department.

III. PROJECT EVALUATION METHODOLOGY

Project results were evaluated based on outcomes defined per result area. Evaluation was completed using mixed methods of measurement. ABA ROLI used both qualitative data and quantitative data to measure success. The indicators set under the PMP formed primary basis for identifying areas of measurable success.

The table below outlines result areas, objectives and indicators used corresponding to key project components under the project.

Table 1: Goals, Result Areas, and Objectives

GOALS/ RESULTS	OBJECTIVES AND MEASURABLE INDICATORS
Project Goals 1: Increase access to justice	
Result 1.1: Nationwide Implementation of Small Claims	<p>1.1(a): Increased availability of the new small claims court system nationwide 1.1.1 Increase in the number of courts designated to hear small claims cases</p> <p>1.1(b): Increased public awareness and knowledge of new small claims court rules and procedures 1.1.2 Increase in the number of NGO partners, especially media groups, and government institution partners that provide regular public information on small claims 1.1.3 Increase reach of public awareness campaigns on small claims</p> <p>1.1(c): Improve ability of judges and court personnel to process and adjudicate small claims cases 1.1.4 Reduce the average length of time from filing to resolution of disposed small claims cases 1.1.5 Improve clearance and disposition rates in small claims cases</p>
Result 1.2: Use of civil forfeiture law and the Anti-Money Laundering Act (AMLA) to secure forfeiture of real and personal properties of suspected human traffickers enhanced	<p>1.2: Enhance the use of civil forfeiture law, R.A. No. 1379 and the Anti-Money Laundering Act (AMLA) to secure forfeiture of real and personal properties of suspected human traffickers 1.2.1 Government agency representatives, private lawyers and NGO representatives report improved capacity in pursuing forfeiture cases against human traffickers 1.2.2 Clear and well-defined roles and responsibilities, and corresponding procedures, in pursuing civil forfeiture cases in trafficking cases 1.2.3 Number of freeze orders of trafficking in persons reported by AMLC/ DOJ/ IACAT 1.2.4 Protocols and collaborative mechanisms developed among stakeholders.</p>
Project Goals 2: Improve efficiency of court administration and judicial services	
Result 2.1: Material Assistance to First Level Courts in the Autonomous Region of Muslim Mindanao (ARMM)	<p>2.1: Judge and court personnel able to administer their duties more efficiently through the provision of filing and storage equipment and furniture 2.1.1 Court personnel report improvements in storage, access and overall conditions of work in the court</p>
Result 2.2: Support to the Philippine Judicial Academy (PHILJA) for Select Judicial Efficiency and Integrity Program (Benchbook and Criminal Sentencing Guidelines) Provided	<p>2.2(a): Increased efficiency of trial judges in court performance and case management 2.2.1 Judges report increased consistency of understanding of specific provisions of laws, court rules and procedures, and select jurisprudence</p> <p>2.2(b): Judges provide more just and consistent criminal sentences</p>
Result 2.3: CMIS Extended to the Court of Appeals in Cebu City and Cagayan de Oro City	<p>2.3 (a) : Improved ability of the courts to generate case information 2.3.1 Live generation of and access to updated case information</p> <p>2.3 (b): Improved ability of the courts to monitor judicial performance and use judicial performance information 2.3.2 Improved speed in accessing performance information 2.3.3 Court of Appeals able to Use Accessible Data to Improve Court Performance</p> <p>2.3 (c) Improved Court Performance Resulting From More Efficient Case Information</p>

GOALS/ RESULTS	OBJECTIVES AND MEASURABLE INDICATORS
	<p>Management and Increased Access to Court and Case information</p> <p>2.3.4 <i>Increase in Clearance Rate and Decrease in Clearance Index</i></p> <p>2.3.5 <i>Decrease in length of time from filing to submission of Case for Decision</i></p>
<p>Result 2.4: Support Provided to the Supreme Court to Prepare for the 2010 Elections</p>	<p>2.4 (a): Proper allocation resources of the Judiciary for post-election litigation</p> <p>2.4.1 <i>Training and administrative recommendations by ABA ROLI Consultant Libertas considered and, in some cases, adopted by the court</i></p> <p>2.4.2 <i>At least one election court designated per election hotspot identified</i></p> <p>2.4 (b): Increased capacity of judges to understand new automated election system and complicated election issues, and able to quickly and efficiently adjudicate local election disputes</p> <p>2.4.3 <i>Appealed election cases affirmed by COMELEC or Supreme Court; and</i></p> <p>2.4.4 <i>Increase in election case clearance rate</i></p>
<p>Result 2.5: Enhanced CMIS features and management techniques at the Court of Tax Appeals, Sandiganbayan, and the Court of Appeals to increase judicial efficiency</p>	<p>2.5 (a): Increased capability to monitor court performance of Sandiganbayan</p> <p>2.5.1 <i>Live Generation of Updated Case Information in Sandiganbayan</i></p> <p>2.5 (b): Increased capacity and efficiency of CTA lawyers and accountants to assess damages and penalties</p> <p>2.5.2 <i>Perceived Increase in Knowledge on Specific Topics of Trained Legal Staff and Financial Analysts of the Court of Tax Appeals</i></p> <p>2.5 (c): Improve Speed of Case Disposal in the Court of Tax Appeals</p> <p>2.5.3 <i>Decreased Average Age of Cases in the Court of Tax Appeals</i></p> <p>2.5.4 <i>Increased Clearance and Disposition Rates</i></p>
<p>Result 2.6: Automated Case Management Information System (CMIS) for the Quezon City trial courts</p>	<p>2.6: Improve case information recording and case management in Quezon City (QC) pilot courts</p> <p>2.6.1 <i>Reduce the number of steps to oversee cases and monitor case status/ activities</i></p> <p>2.6.2 <i>Reduce the number of steps to complete performance reports</i></p>
<p>Result 2.7: Pilot and Refined Set of Practice Guidelines in Quezon City Trial Courts</p>	<p>2.7: Increase case resolution efficiency in Quezon City courts</p> <p>2.7.1 <i>Reduce overall case processing time</i></p>
<p>Result 2.8: Audit Inventories of Trial Courts with Anomalous Caseloads to Cleanse Dockets of Stale or Inactive Cases and Promote Judicial Accountability enhanced</p>	<p>2.8 (a): Reduce backlog in selected courts</p> <p>2.8.1 <i>Increase Clearance Rates</i></p> <p>2.8 (b): Improve the capacity of the Office of the Court Administrator in conducting diagnostic audits and identify obstacles to case disposition</p> <p>2.8.3 <i>Improved level of information to support diagnostic audits</i></p> <p>2.8 (c): Strengthen capacity of courts to work on strategic measures and practices to address case delay and docket congestion</p> <p>2.8.4 <i>Docket Management Planning Process Completed by Courts</i></p> <p>2.8.5 <i>Courts Continue to use the inventory tools to assess issues in case delay and backlog</i></p> <p>2.8.6 <i>Reduce case processing time</i></p>
<p>Result 2.9: Use and effectiveness of Alternative Dispute Resolution (ADR) to accelerate commercial dispute resolution and reduce case burdens on courts promoted</p>	<p>2.9: Enhanced capacity of the OADR to serve as a national resource on ADR</p> <p>2.9.1 <i>OADR develops accreditation and training standards as it performs its functions as national resource on ADR</i></p>
<p>Result 2.10: Efficiency and consistency of decisions of Special Commercial Courts</p>	<p>2.10: Improve knowledge and skills of SCC judges in handling commercial cases</p> <p>2.10.1 <i>Percent of SCC judges who report improved knowledge in key areas they have identified as "training needs"</i></p>

GOALS/ RESULTS	OBJECTIVES AND MEASURABLE INDICATORS
(SCC) increased	
Project Goals 3: Enhance integrity and accountability	
Result 3.1: Assistance to the Judiciary with Further Implementation of its Strengthening the Integrity of the Judiciary (SIJ) Program	3.1 (a): Implementation of priority integrity reform measures identified under the Strengthening the Integrity of the Judiciary Program 3.1.1 <i>Priority integrity reform policy recommended and submitted to the Supreme Court</i>
Result 3.2: Code of Conduct and Manual of Public Attorneys and Annotated Code of Conduct for Prosecutors	3.2: Improved level of ethical and professional standards of public attorneys 3.2.1 <i>Improve tools of PAO in reviewing and enforcing administrative disciplinary measures for misconduct and unethical behavior among its ranks</i>
Result 3.3: Capacity of DOJ's Internal Affairs Unit (IAU) Built	3.3: Improve level of ethical and professional standards of prosecutors 3.3.1 <i>Improved institutional capacity to monitor and enforce administrative disciplinary measures for misconduct and unethical behavior among its ranks</i>
Result 3.4: Technical assistance to DOJ in creation of new Office for Competition (OFC) to improve business environment	3.4 Provided strategic assistance to the DOJ in operationalizing the Office for Competition

III. PROJECT RESULTS AND IMPACT

GOAL 1: INCREASED ACCESS TO JUSTICE

Result 1.1: Increased access to more efficient, reliable, and affordable court services through the nationwide implementation of a small claims courts program

Building on a successful 2008 ABA ROLI/Philippines pilot of small claims procedures in 44 courts, ABA ROLI worked with the Supreme Court to improve upon the procedures and implement them in all first level courts nationwide, with the exception of the Shari'a Courts. ABA ROLI did so, in concert with the Supreme Court, to increase access to more efficient, reliable, and affordable small claims court services.

The revamped small claims procedures:

- Target money claims of not more than P100,000 or \$2,500. For indigents, micro, and small enterprises in the Philippines going through the formal court procedures may be more expensive than the amount of their claim. The new procedures ensure a swift and inexpensive means of resolving small claims disputes.

- Provide simple filing procedures for claimants. The new procedures do away with the formal pleadings and instead use ready-made forms rendered in both English and Filipino. The forms may be completed without the need for lawyers. Court personnel are required to assist litigants in the completion of these forms.
- Prohibit certain pleadings that tend to delay cases through legal technicalities, such as motions for postponements and cross and counterclaims.
- Prohibit lawyers from representing the litigants during hearings to lessen the cost of litigation and reduce time in the resolution of cases.
- Require the courts to decide cases only at the first hearing.
- Discourage postponements due to non- appearance of parties. Non-appearance of the plaintiff in a hearing may result in the dismissal of the case without prejudice to its re-filing; and failure to appear of the defendant will result in an ex parte hearing.
- Incorporate judicial dispute resolution as part of the hearing procedure to open litigants to amicable settlement when applicable.
- Renders the decision of small claims courts final and not open to appeal.

In partnership with the Supreme Court, ABA ROLI achieved a national roll-out of these revamped small claims procedures. Indeed, by 2010, 1,137 first level courts were designated as small claims courts. ABA ROLI then trained 1,400 judges and court personnel on the Amended Rules of Procedure on Small Claims and distributed applicable materials on the same. A Small Claims Handbook for Judges and Court Personnel was also developed, printed, and distributed in 2010 to 4,020 judges and court personnel to serve as their operations manual in handling small claims cases.

To ensure that there was an increased awareness and understanding of the new small claims courts and procedures, ABA ROLI undertook both a national public outreach campaign and community-based events to publicize the availability and purpose of the courts. Throughout 2012, ABA ROLI worked with the Supreme Court and media, government, and NGO partners to publicize these changes. ABA ROLI developed small claims materials for distribution its partners to increase public awareness and address procedural questions of the public. Moreover, ABA ROLI coordinated community-based information drives, barangay outreach programs, and small claims road shows in target areas throughout 2010 and 2011 to reach local government and business owners as advocate-partners in increasing public awareness on small claims procedures.

Finally, ABA ROLI developed and installed a Small Claims Case Monitoring System (SC2MS) which was fully operational by 2012 in most of the first level courts¹. The SC2MS was provided to increase the capacity of the courts themselves as well as the Office of the Court Administrator (OCA) in monitoring caseload, performance, and entry of small claims cases. ABA ROLI conducted trainings on the use of the SC2MS and a help desk was established under the Supreme Court to provide useful troubleshooting and technical advice should issues arise on the use of SC2MS.

Overall Results:

Objective 1.1(a): Increased availability of the new small claims court system nationwide

1.1.1 Increase in the number of courts designated to hear small claims cases

Since the issuance of the roll-out order by the Supreme Court in 2010, all 1,137 first level courts (excluding Shari'a courts) hear small claims cases based on the Rules of Procedure for Small Claims. First level courts are spread across all regions, major cities, and provinces in the country. On March 18, 2010, thirty days after the release of the resolution, the Supreme Court issued an Order implementing the Rule in all first-level courts nationwide (except Shari'a courts) authorizing 82 Metropolitan Trial Courts, 212 Municipal Trial Courts in Cities, 376 Municipal Trial Courts, and 467 Municipal Circuit Trial Courts to hear small claims cases. Court Administrator Jose Midas P. Marquez issued OCA Circular No. 35-2010 to direct the raffling of all small claims filed in multiple-sala court stations.

First level courts implement the Amended Rule of Procedure for Small Claims based on the recommendations of the Technical Working Group on Small Claims Courts (TWG) and integrating lessons learned from the pilot program that ABA ROLI undertook under a previous USAID grant. Approved amendments and publications include a provision for scalable fees for frequent filers; informative forms for litigants in both English and Filipino; and administrative guidelines for judges and court officers to ensure effective implementation.

Objective 1.1(b): Increased public awareness and knowledge of new small claims court rules and procedures

1.1.2 Increase in the number of NGO partners, especially media groups, and government institution partners that provide regular public information on small claims

ABA ROLI tapped a total of 10 national government agencies, and 19 non-governmental organizations, including media outlets, for the promotion of small claims procedures. These agencies/organizations have nationwide coverage and continue to air videos and infomercials and feature small claims information and success stories..

¹ Not all courts received training due to lack of access to computers and the availability of representatives from these courts during the training. As of 2011, only 891 courts were provided computers under a parallel World Bank project. Despite this, ABA ROLI was able to train 1,048 court clerks on the use of S2MS.

Government and non-government partnerships were leveraged to enable airing/viewing of media materials produced under the project nationwide and in different time slots. ABA ROLI used both print and broadcast media to explain to the public how small claims courts will benefit them. Further, blogs and featured articles on the web served to improve awareness of the public who access internet-based information. In FY 2012, ABA ROLI forged strategic partnerships with organizations and entities that will enable nationwide reach and allow leveraging of resources. The table below summarizes the strategy for the nationwide outreach campaign.

Table 2. Estimated Reach and Coverage of Public Information Campaign

STRATEGY	MATERIAL USED	ESTIMATED REACH AND COVERAGE
1. Partnering with local government officials, local business owners, and local media groups to extend public information in the community level	Handouts/ FAQs	<ul style="list-style-type: none"> • Around 600 local officials, business owners and local media groups with potential to reach local communities in Davao City, Dipolog City, Dapitan, Bacolod, Iloilo City, and Cebu City, as well as adjacent municipalities and communities.
2. Partnering with government institutions that may be considered to have the most “foot traffic” or where a large number of public wait in organized public service areas	Three 15 minute videos	<ul style="list-style-type: none"> • The 10 government agencies committed based on their ability to provide free viewing of the 15 minute video in their public areas. Each agency has regional and satellite offices in the country covering cities and municipalities in Luzon, Visayas and Mindanao. Each of the agencies has an estimated 10,000 foot traffic per office, covering broad C and D markets.
3. Partnering with media groups to ensure public information is aired/ viewed in as many media materials as possible	30 sec. infomercial Three 15 minute videos Press release material	<ul style="list-style-type: none"> • From September to December 2012, an estimated total of 29 airtime slots are committed by TV and radio networks. Most of these networks are accessible nationwide. Each of these media agencies and their projected estimated reach are summarized below: <ul style="list-style-type: none"> - ABS-CBN: 2 million Filipinos nationwide; - PTV 4: 85% of the viewing public (approx. 1.9 million); - RPN 9: (no data); - IBC 13: 60% of the viewing public (approx. 1 million) - Net25: (no data) • 4 Print Media coverage, 3 media partners with nationwide circulation and 1 with Cebu-based circulation. The total estimated reach based on circulation of materials totals to 492,879 nationwide. • According to a study conducted by <i>factbrowser.com</i>, Philippine users browse social network sites 15 billion times every month in 2012, thus providing social media (i.e. websites, blogs) sites a high number percentage of reach and coverage among web users.

STRATEGY	MATERIAL USED	ESTIMATED REACH AND COVERAGE
4. Partnering with transportation institutions with high foot traffic/ high number of passengers	30 sec. infomercial	<ul style="list-style-type: none"> 2GO has committed to air the infomercial from October – December in its trips to and from Cebu, Tagbilaran, Bacolod, Iloilo and Cagayan de Oro. It also committed to air the infomercial throughout November 2012 in trips to and from Zamboanga, Butuan, General Santos, Batangas and Caticlan. 2GO has an estimated 518,000 passengers for the months they have committed.

SOURCES:

1/ Reach and coverage of television networks were listed from websites and wiki entries of each of these channels as of July 2012.

2/ Circulation of newspapers are gathered from Business World, Inquirer Libre, The Freeman, and Philippine Star.

3/ Data on foot traffic of 2GO was provided by 2GO, November 2012.

4/ Government institutions were interviewed about their estimated number of applicants for services who wait at public areas of their offices.

1.1.3 Increase reach of public awareness campaigns on small claims

Through strategic partnerships, ABA ROLI's public awareness campaign has reached all regions in the country, especially urban localities with increased media access and increased access to government agencies. Based on figures set out in Table 2, the estimated reach of these media and government partners is close to 20 million nationwide.

Efforts to reach local leaders and businessmen were completed in 2010 and 2011, allowing public information on small claims to spread in select local communities in Western Visayas and Mindanao. The initial public outreach activities reached about 600 local district officials, community business leaders and local media in these regions through information drives and local fora.

Objective 1.1(c): Improve ability of judges and court personnel to process and adjudicate small claims cases

1.1.4 Reduce the average length of time from filing to resolution of disposed small claims cases

As a result of ABA ROLI's efforts, first level courts reduced their average length of time from filing to resolution of disposed cases in small claims procedures in 2010 and 2012. An increase to 4 months was noted in 2011, but this is believed to be due, in part, to a likely increase in the overall number of cases filed because of increased accessibility and due to an inevitable transition period following completion of trainings and as the new procedures were introduced.

**Table 3: Average Length of Time
from Filing to Resolution of Disposed Small Claims Cases, 2010-2012**

INDICATORS	Baseline	2010	2011	2012

INDICATORS	Baseline	2010	2011	2012
Ave. Length of time from Filing to Resolution of Case (in months)	4-6 months	1.5 months	4 months	1.4 months
Ave. Length of time from Filing to Resolution of Case (in days)	180 days	89 days	121 days	43 days

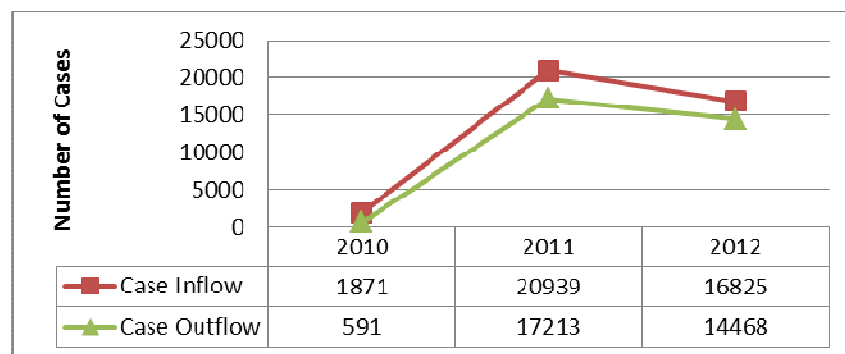
SOURCE: CMO Inventory of Small Claims Cases, 2010
SC2MS Generated Data, 2011 and 2012

1.1.5 Improve clearance and disposition rates in small claims cases

In 2010, the Supreme Court collaborated with ABA ROLI to implement a series of seminars to give judges and clerks of court a comprehensive understanding of small claims procedures, as well as practical advice on mediation and case resolution. By the end of 2010, nine trainings were held in Luzon, Visayas, and Mindanao reaching 1,400 first level trial court judges and clerks of court. The one-day trainings used case studies to prepare participants for confronting common problems encountered by judges in the small claims pilot program.

ABA ROLI continues to monitor court performance towards achieving the goals of decreased duration and improved resolution efficiency of small claims cases. Small claims courts show substantial increase in filing in 2010, 2011 and 2012. The graph below shows case inflow and outflow information on small claims cases. 2010 reflects baseline data on small claims filing and disposition, showing statistics of cases 6-8 months from the roll-out of small claims procedures in all first level courts. With only 200 reports collected to establish baseline, case inflow and outflow show low filing and relatively low disposal rates. Only 32% of the cases filed within the year were cleared in 2010.

Figure 1: Case Inflow and Case Outflow for Small Claims Cases 2010-2012

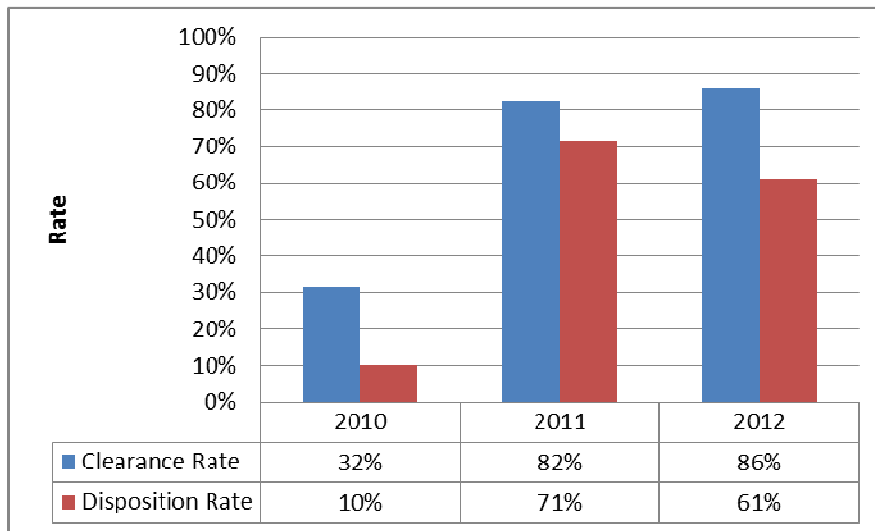


SOURCE: CMO Inventory of Small Claims Cases, 2010
SC2MS Generated Data, 2011 and 2012

2011 and 2012 reflect performance data on small claims courts. With the increase of filings, the courts were able to improve their clearance rates from 82% in 2011 to 86% in 2012. This indicates continued

improvement of courts in handling small claims courts following the roll out in 2010 and trainings that were completed in 2010 and early parts of 2011.

**Figure 2: Clearance and Disposition Rate of Small Claims Cases
2010-2012**



SOURCE: CMO Inventory of Small Claims Cases, 2010
SC2MS Generated Data, 2011 and 2012

However, while the disposition rate has increased considerably from the baseline of 10% in 2010 to 71% and 61% in 2011 and 2012, respectively, there is an increasing nominal amount of pending small claims cases carried over to succeeding years. Courts have to dispose a higher percentage of cases to rid of the increasing backlog experienced by first level courts. For 29% of cases in 2011 (amounting to roughly over 6,900 cases) and 39% of cases in 2012 (amounting to roughly over 9,200 cases) case durations may be higher than the average of 1.4 months recorded for disposed cases. Pending cases range from 2 months to 18 months in duration in 2011 and 2012 (based on SC2MS generated data, 2012). Possible reasons for the continued increase in pending cases, despite the shorter duration of small claims cases, include:

- (a) The high number of continuances granted by courts “in the interest of justice” may increase case duration of pending cases considerably. In the Case Decongestion and Delay Reduction Project (also under ABA ROLI and included under this report), sample first level courts have as much as 1,700 continuances per month mostly due to the non-appearance of parties or failure to file a corresponding response. The Procedures specify, however, that the inability to file an answer, reply, or response and non-appearance on the only hearing provided for small claims may be a cause for an ex-parte hearing and/or dismissal of the case .
- (b) High caseload first level courts also schedule hearings in 1-5 months following exchange of pleadings or responses because of their full calendars in other cases. This was observed in

Quezon City where court calendars of Metropolitan Trial Courts are full for the next 3-4 months. In these courts, at least 30 cases are set for hearing each day.

All told, the nationwide implementation of small claims procedures has effectively reduced duration of case litigation in first level courts from the 2010 baseline of to only 1.4 months by the end of 2012.

Based on clearance rates, 86% of the cases filed are resolved, a significant increase from the baseline rate of 32 percent in 2010. However, the increase in clearance rates needs to be consistent to rid of pending small claims cases by end of each year.

Despite an increasing disposition rate from 10% in 2010 to 61% in 2012, pending cases in first level courts continue to increase every year, consistent with court statistics for all types of cases filed under first level courts. The age of pending cases ranges from 2-18 months in more than 9,200 (or 39%) of small claims cases. This means that while small claims cases provide speedier and cheaper dispute resolution procedures in the formal court process, many of these cases may also suffer considerable delays. Possible reasons for this are the lenient application of procedures “in the interest of justice” and the endemic issue of high overall court caseload and full court calendars. A more in-depth study on possible issues confronting the implementation of the small claims procedures is forthcoming after one year of full stabilization of the procedures in first level courts.

Random interviews were conducted in 2010 and 2011 to gauge increase in confidence of lending institutions and small business owners. Successful and speedy litigation of cases were highlighted in these interviews published under USAID, ABA ROLI and other media websites. A more scientific survey to measure increase in confidence of relevant economic institutions may be required to measure not only user satisfaction in the system, but also awareness and confidence to invest of other non-users.

Result 1.2: Strengthen the Prosecution and Deterrence of Human Traffickers by Promoting Civil Remedies under the Anti-Money Laundering Laws

To strengthen the prosecution of, and to deter, human traffickers, ABA ROLI developed protocols with the Department of Justice and partnering NGOs on the submission of requests for freeze orders and use of information gained from asset forfeiture proceedings to pursue prosecution of alleged traffickers. In its efforts, ABA ROLI improved overall cooperation among key stakeholders (government, NGOs and victims groups) to strengthen the use of developed protocols in the application of money laundering laws to target assets connected with human trafficking. Moreover, ABA ROLI printed over 1000 copies of the “Inter-Agency Council against Trafficking (IACAT), Using the Anti-Money Laundering (AMLA) to Combat Trafficking in Persons Handbook.” The handbook was formally launched on December 12, 2012, on International Day against Human Trafficking. The IACAT strategic action plan, forced labor manual and civil forfeiture handbook on human trafficking cases was also launched. ABA ROLI then coordinated three trainings for government

and private lawyers on the use of civil remedies to combat human trafficking. Finally, ABA ROLI undertook a series of outreach activities with anti-trafficking NGOs on the use of civil remedies to combat trafficking,

Ultimately, the collaborative mechanisms, protocols and handbooks developed under the Project increased participation and clarified responsibilities and possible assistance each stakeholder could provide in pursuing civil forfeiture in trafficking cases. Moreover, a survey of stakeholders evidences a clear indication that, should there be a chance, they are able and willing to pursue cases based on the protocols developed for pursuing civil forfeiture in trafficking cases.

Overall Results:

Objective 1.2: Enhance the use of civil forfeiture law, R.A. No. 1379 and the Anti-Money Laundering Act (AMLA) to secure forfeiture of real and personal properties of suspected human traffickers

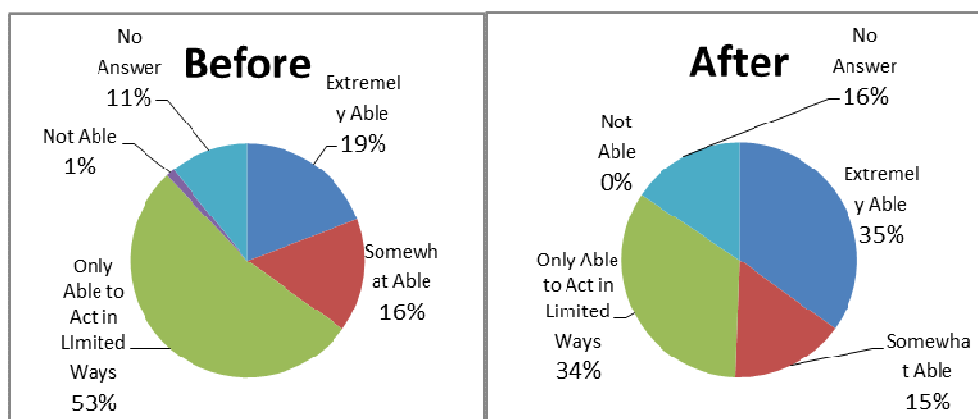
1.2.1 Government agency representatives, private lawyers and NGO representatives report improved capacity in pursuing forfeiture cases against human traffickers

ABA ROLI and UP Law Foundation conducted a survey of 83 training participants in 2012 to gather their feedback on the training and to assess any change in the perceived ability to pursue forfeiture cases as a result of the training. Results of the survey reveal that 96.5% participants felt that the training improved their ability to act on trafficking cases using AMLA. At the end of the training, 100% of the participants felt that they could pursue trafficking cases through civil lawsuits under AMLA. However, some participants felt that they could act on these in varying degrees. The total percentage of participants who felt that they were very capable of pursuing trafficking cases rose by 16%. Before the training, 19% of the participants reported they felt very capable of pursuing trafficking cases. After the training, 35% of the participants felt very capable of pursuing trafficking cases.

The percentage of participants who felt they were limited by other concerns and conditions in pursuing civil forfeiture cases in trafficking cases decreased by 19%. Before the training, 53% of the participants felt they could act on trafficking cases in limited ways. After the training, the percentage of participants who felt limited in their ability to act on trafficking cases went down to 34%. Therefore, the training increased participants' sense of empowerment in acting on trafficking cases.

Finally, 44% of the participants stated that the most common issues affecting their ability to pursue civil remedies in trafficking cases included their respective organizations' lack of resources such as funding (20%), staffing (12%) or capacity building/training (12%). Further, 20% of the participants reported difficulty in obtaining the cooperation of trafficking survivors, and 18% reported difficulty in obtaining necessary evidence as significant factors that affect their abilities to pursue trafficking cases. Other reasons mentioned include government institutions not taking cases seriously or lacking commitment, law enforcement's inability to gather evidence, and lack of legal support.

Figure 3. Participants' perception of their or their organization's ability to pursue trafficking cases before and after the training

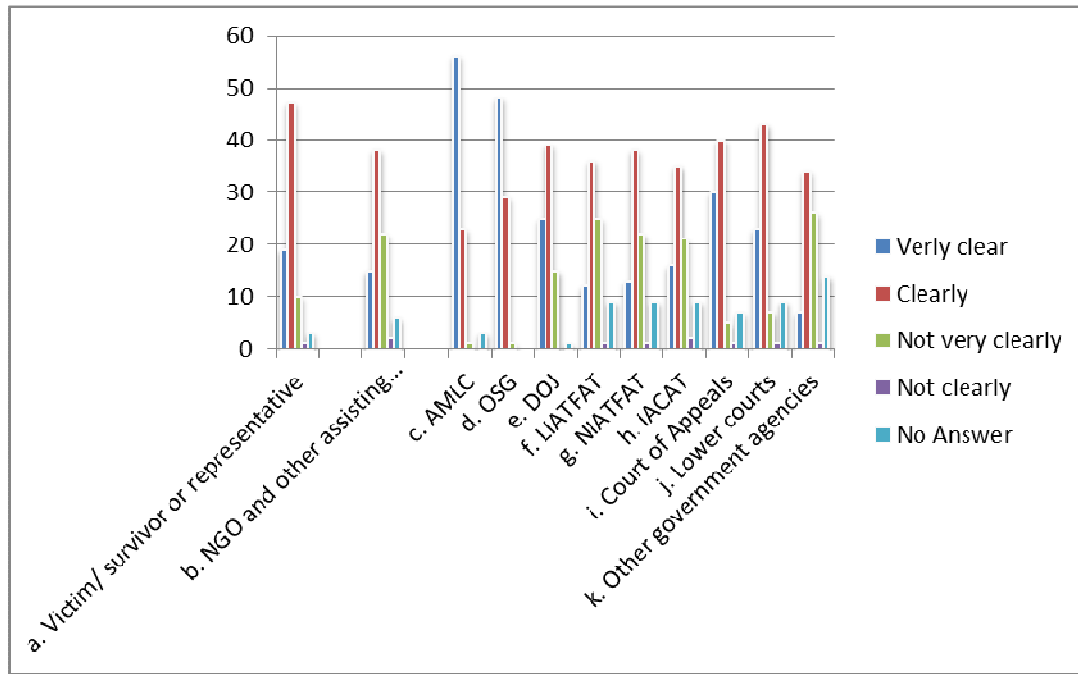


1.2.2 Clear and well-defined roles and responsibilities, and corresponding procedures, in pursuing civil forfeiture cases in trafficking cases

ABA ROLI found that improving participants' knowledge of protocols, government services, and possible interventions is invaluable where civil forfeiture cases may be pursued in TIP cases. Trainings reinforced information that is stipulated under the Handbook in clarifying roles, responsibilities, and procedures that may be observed among various stakeholders. For non-government and non-lawyer stakeholders particularly, the trainings and the Handbook provide clear, step-by-step procedures. For government agencies, the Handbook clarifies protocols and matters that require coordination with other government agencies, as well as provides guidance for select conditions.

The trainings provided participants with a clear definition of roles and responsibilities of government agencies that can provide support and assistance in pursuing civil forfeiture cases for TIP cases. This knowledge improves their ability to initiate action on TIP cases. The survey conducted during the training assessed participants' perception of how clear the training defined roles in civil lawsuits under the AMLA for trafficking cases. Results show that 74% of participants felt that stakeholder roles and responsibilities were clearly or very clearly explained. More than 70% of the participants felt that the role of key government agencies such as AMLA, OSG, DOJ and the judiciary was either very clearly or clearly defined during the training. The trainings allowed various stakeholders to explore and discuss roles assigned to them to improve the knowledge and understanding.

Figure 4. Participants' Perception of How the Well the Training Defined Roles of Stakeholders in Pursuing Civil Forfeiture Cases Under the AMLA for Trafficking Cases



The Handbook considers inputs gathered through a series of validation activities with all types of stakeholders. Thus, it does not only clarify roles, responsibilities and procedures, but also relays these in terms and figures that stakeholders, especially non-lawyers, are comfortable with. The Handbook showcases the following features:

1. Clearly stipulates the roles and responsibilities of AMLA, DOJ, OSG, lower courts and appellate courts, LIAFAT, IACAT and private citizens.
2. Details procedures with each government agency and provided sample transactions so that readers can easily relate. The Handbook provides easy-to-read flowcharts that charts steps for all types of stakeholder groups.
3. Provides a description of protocols to be observed among government agencies, and defines possible areas where coordination will be required or may be advantageous.
4. Provides contact information for all key government agency, non-government organizations and other private parties that may provide assistance, support and are party to pursuing civil forfeiture cases under TIP cases.

1.2.3 Number of freeze orders of trafficking in persons reported by AMLC/ DOJ/ IACAT

Based on the IACAT Masterfile, a total of 1,519 trafficking cases were filed under the Anti-Trafficking in Persons Act of 2003 (R.A. 9208). Only 62 cases resulted in convictions. However, since the novel approach of filing forfeiture cases under the AMLA has been relatively unexplored, available data on whether any such cases were filed in the past is limited. According to the AMLC,

from 2010 to 2011, it filed only two petitions for civil forfeiture which involved human trafficking, using estafa as a predicate offense. Both cases are still pending in court but were issued Asset Preservation Orders that prevent any transaction of properties or proceeds related to the case. Currently, AMLC, DOJ and IACAT do not have TIP cases where they intend to file freeze orders. This outcome is reasonable, considering that trainings were just completed in September 2012.

1.2.4 Protocols and collaborative mechanisms developed among stakeholders.

A fundamental outcome of the project is the development of protocols among collaborating agencies in this relatively new manner of pursuing TIP cases. AMLC shared their know-how in pursuing civil forfeiture cases as the Handbook and the trainings were developed. They have also clarified processes on how other government agencies can work with them in making sure that TIP cases where civil forfeiture is applicable will be pursued.

DOJ's IACAT also provides significant means to track and build civil forfeiture cases under the AMLA in TIP cases. The Handbook describes in detail the protocols of each agency involved in the IACAT such that non-government entities and victims will know where to file and what procedures will be initiated. Corresponding roles and responsibilities of all IACAT agencies are stipulated as well in the Handbook.

All government partners for the project have agreed to coordinate and collaborate in pursuing freeze orders for TIP cases. The Handbook was a product of a participatory process to define roles, protocols and mechanisms in handling TIP cases through the AMLA.

Goal 2: Increased Adjudication Efficiency in Court Administration and Provision of Services in the Philippine Judiciary

Result 2.1: Enhanced capacity of the 33 ARMM first Level Courts to Provide Judicial Services

To enhance the capacity of the 33 ARMM first level courts, in FY 2012, ABA ROLI completed furnishing court rooms and court offices. 32 first level courts received their furniture. A newly-created RTC branch in Wao was also provided furniture and equipment, in lieu of MTC Cagayan de Tawi-Tawi. The MTC of Cagayan de Tawi-tawi was excluded due to difficulties experienced in accessing the court.

These courts benefitted from the following upgrades:

- All judges' chambers were furnished with executive tables and chairs, subject to available space.
- All court personnel who provide administrative and adjudicative support are given desks and chairs, subject to available space. All court personnel have standard clerical tables.
- Clerks of court are given distinct desks and chairs to differentiate them from the regular staff.
- Staff will be given clerical tables and chairs.

- Visitors chairs are provided for the staff area and judge’s chamber.
- A full height and 2-layer lateral file now serves as storage for files, documents and evidence. Where space permits, butterfly vertical cabinets are provided as these allow easier filing and retrieval of court records.
- Subject to available space, all courts are provided one bookshelf.
- All courts are provided legal materials supplied by ABA ROLI, including reference materials in Criminal, Civil, Commercial, Political, and Remedial Law, and Legal Citations.
- One electric fan is allotted for every 15-square meter space, up to a maximum of six electric fans. In offices with a total area of 15 to 30 sq.m. two electric fans are provided.
- All courts are given one electric typewriter.
- All courts are provided with one personal digital recorder regardless of the number of stenographers or the absence thereof.

“Basic” court facilities were determined based on an assessment of what ARMM courts have and what they can use considering: (1) the floor area of their court offices and court rooms; (2) staff compliment; (3) functions of each staff; and (4) core furniture and equipment they are able to manage and maintain.

As a result of this furniture and equipment upgrade, court personnel now believe that they are better able to administer their judicial duties. A representative sample of court judges and personnel report increased capacity to store, access and organize files and use the new filing systems, cabinets and shelves donated under the project. Thus, courts’ capacity to secure case rollos and case evidence in the court was enhanced. Staff may now organize their files properly and access them easily. Moreover, a sample number of court judges and personnel also report improved office and courtroom conditions. This will enable them to function more efficiently and provide suitable means to conduct hearings and seat litigants.

Overall Results:

Objective 2.1: Judge and court personnel able to administer their duties more efficiently through the provision of filing and storage equipment and furniture

2.1.1 Court personnel report improvements in storage, access and overall conditions of work in the court

Based on the results of the pre-assessment survey, most first-level courts in the ARMM were found to be bare and decrepit. Visual inspection showed that many courts had minimal furnishings; few courts were air-conditioned and most lacked working ceiling fans. Nearly all courts lacked computers, stenographic machines, or dependable typewriters. Without digital recorders, cases are recorded onto cassette tapes or not at all. Document and evidence storage poses other problems. A few courts have vertical or horizontal filing cabinets. The courts that lacked proper filing cabinets reported that old cases are simply bundled together or kept in cardboard boxes in the hallways. Accordingly, ABA ROLI procured desks, chairs, filing cabinets, digital recorders, typewriters, and electric fans and a set of legal materials.

ABA ROLI and the Office of the Court Administrator conducted a second survey in January 2013 to measure perceived improvements of court judges and personnel upon delivery of basic furniture in the 33 ARMM courts. Out of the 33 courts, only 16 courts responded. The survey was administered to judges, clerks of court, and other staff (stenographer and sheriff). The survey showed that thanks to the new furniture and equipment

- 96% of the respondents report that their court now has sufficient capacity to organize and properly file case documents/ rollos. 87% of the respondents noted that prior to the donation, 40-60% of their rollos were not filed in cabinets or in safe facilities. Also, 66% of the participants report that while rollos/ case documents were accessible to them, finding documents in a timely manner was an issue.
- 100% of the respondents feel that the donation has contributed to the safe, clean and secure storage of evidence .
- 82% of respondents feel that prior to the donation, offices of the judge, clerks and other staff were not suitably furnished for efficient work. Through the donation, 100% of the respondents believe that court offices are properly furnished to complete their work.
- 94% of the respondents also report that the donation has increased the courts' capacity to seat litigants and to hold hearings. However, 41% of the respondents still note a few more requirements that may improve office conditions, such as air conditioning units and computers.

Result Statement 2.2: Increased efficiency and effectiveness of the courts using the Benchbook for Trial Court Judges and the Criminal Sentencing Guidelines

The Benchbook for Philippine Trial Courts (Revised and Expanded), produced by ABA ROLI and the PhilJA with funding from the USAID, provides trial court judges with an annotated compilation of legal resources, otherwise lacking or unavailable in local trial courts, especially in far flung areas of the country. It is borne from the need of a single source for direct, but complete answers to most common queries of trial court judges. The outcome desired is for the judiciary to produce more consistent decisions across regions, and to follow the principles of *stare decisis*: that they are bound by decisions of law decided upon by higher courts. As a broader acceptance and implementation of *stare decisis* is engrained in the trial court system, attorneys and businesses will be able to better predict how a dispute might be ruled upon by a court. The Benchbook is an important step towards achieving this goal because it provides a single source for all controlling precedent and circulars issued by the Supreme Court.

As of November 2012, ABA ROLI and PhilJA completed a total of 14 trainings on the *Benchbook*, training 875 trial court judges and 112 court attorneys.

In FY 2012 ABA ROLI provided 2,500 copies of the *Benchbook* for distribution throughout the country by the PhilJA. PhilJA intends to pursue several more trainings in line with the *Benchbook* and plans to continue its distribution towards the end of this year.

The Sentencing Guidelines aimed to reduce sentencing errors and the time spent researching and determining correct sentences, thereby assisting in judicial efficiency and preventing injustice. As such, they can serve as a critical tool in the Chief Justice's plans to decongest detention facilities.

Judges referring to the Guidelines are expected to impose shorter minimum imposable sentences than what they usually impose. Currently, the easiest sentence for a judge to calculate is the maximum allowed by law. The sentencing guidelines show how judges can lawfully reduce the prison time they give to convicted person. This will hopefully address the growing concern of prison overcrowding.

Ultimately, judges report that the Benchbook and corresponding trainings increased their consistent understanding of rules and procedures, laws, and jurisprudence. The information provided and the sharing of actual application by the judges themselves allowed discourse necessary for improving capacities of judges to render consistent decisions based on the principle of stare decisis.

Objective 2.2(a): Increased efficiency of trial judges in court performance and case management

2.2.1 Judges report increased consistency of understanding of specific provisions of laws, court rules and procedures, and select jurisprudence

Prior to the *Benchbook*, judges and lawyers of courts in far flung areas with relatively little access to internet-based resources and law libraries, relied on possible materials offered to them by law firms and institutions nearest the court. The lack of access to legal materials delays the issuance of decisions in cases, and more significantly, it hinders judges from rendering decisions based on a good grasp of relevant and current laws and jurisprudence. ABA ROLI ensured that courts are granted access to the *Benchbook*, thereby arming judges with sufficient information to render their decisions judiciously and diligently.

While the provision of the *Benchbook* to all courts grants ready access to a single compilation of laws, rules and jurisprudence relevant to most cases handled by trial court judges and court lawyers, ABA ROLI and PhilJA understood that the use of the material is greatly dependent on the competency of judges and court attorneys to assess case facts, and corresponding application of laws, rules and jurisprudence.

Accordingly, ABA ROLI and its partner PhilJA developed a training curriculum to(1) increase the judges and court attorneys' familiarity with the *Benchbook* and other trial techniques to help them render decisions faster; (2) strengthen skills in the appreciation and evaluation of relevant facts and exclusion of irrelevant facts, and the selection of issues to be resolved; and(3)enhance skills in determining relevant laws, rules and jurisprudence to be applied in resolving common issues. The training is comprised of lectures and familiarization exercises, and utilizes training techniques such as case studies and focus group discussions.

PhilJA continues to conduct trainings and elicits feedback from trained judges on the effectiveness of the trainings in rendering consistent understanding of provisions under the Benchbook. Out of the 875 judges trained on the Benchbook, 96.5% of the respondents report that both the Benchbook and the trainings have improved consistency in their interpretation of specific jurisprudence and pertinent laws and rules. 99% of the respondents also noted that the trainings sufficiently addressed key aspects of law and court rules and procedures that they feel require guidance/ clarity.

Objective 2.2(b): Judges provide more just and consistent criminal sentences

In a survey of trial court judges conducted by ABA ROLI and PhilJA during the Benchbook trainings, it was determined that a surprising percentage of judges misinterpret sentencing laws, with a bias towards longer minimum imposable sentences than what is allowed by law. Through the guidelines, judges will be able to impose correct minimum imposable sentences, and give individuals the opportunity for an earlier release.

ABA ROLI met with Philippine Judicial Academy regarding their validation of the applicability of the Sentencing Guidelines. The Academic Counsel of the Philippine Judicial Academy through DCA Raul Villanueva assessed the Sentencing Guideline Manual. DCA Villanueva will provide a comprehensive report evaluating the guideline and outlining its usefulness. Upon Philippine Judicial Academy Academic Counsel approval, the Manual for Sentencing Guideline will be printed for distribution².

Results Statement 2.3: Modernization of court processes through the Case Management Information System (CMIS) of the Regional Court of Appeals (RCAs)

The revised case management information system (CMIS) has been fully operational in the Regional Court of Appeals (RCAs) and has been used daily by all justices and stations of the court since 2011. It is demonstrating its value for increasing judicial efficiency, introducing transparency, and allowing for greater monitoring of the work done by the court.

The project completed the following outputs:

- 100% of case databases in all RCAs were fully populated with updated information
- CA CMIS 2.0 was customized, deployed, and has continued to be operational in RCAs since 2011
- Hardware and network were installed
- Integration of RCAs to a central system in Manila was completed in 2012
- Enhancements were introduced to CA CMIS, including eRaffle and flexible search, among others.
- Trainings for both users and technical staff was provided
- Continued warranty service is still being provided by Contractor (Ideyatech) for 1 year following installation of the system

The increase in accessibility of information brought about by CA CMIS, coupled with good institutional leadership and capacity, show promising results in reducing backlog and delays in the Court of Appeals. The Zero Backlog Project utilizing CA CMIS particularly, has increased clearance rates from 82% in 2008 to 117% in 2012.

Finally, the impact of CA CMIS in reducing the length of time in case docketing, assignment, and completion of records is estimated using statistics on the number of pending cases per length of

² The printing and distribution of the Sentencing Guidelines has been included in the JUSTICE Program (FY 2012-2017) under USAID Grant.

time from filing to submission of case for decision. 59% of 2012 pending cases observed take 1-2 years from filing to submission of case for decision, where in 2011 only 48% of pending cases fall within this range. Data shows a positive increase in cases with shorter duration from filing to submission of case for decision.

Overall Results:

Objective 2.3 (a) : Improved ability of the courts to generate case information

2.3.1 Live generation of and access to updated case information

The Regional Courts of Appeals report increased access to case information through several features introduced under the CA CMIS:

- Performance reports at the division and per justice level are auto-generated by the system. RCA justices, division clerks of court, and the clerk of court en banc are currently able to view and print reports relevant to them.
- Special reports may be generated through flexible search upon the identification of several key elements of the report required by the user. The flexible search module enables the presiding justice, justices, clerks of court, and judicial records division to work use and correlate various aggregate information for deeper analysis on caseload composition, duration or age of specific types of cases or judicial services, and others.
- Court calendars are quickly viewed by relevant justices and clerks of court in their dashboard. Other activities may be recorded to program work and case activities of the user.
- Basic case information and case status is accessible to relevant justices, clerks of court, and the Judicial Records Division. These are accessible through live viewing of recorded data on case activities, including documents filed by litigants and documents issued by the court, and other corresponding case actions throughout the life of the case.
- Case summaries are accessible to justices, clerks of court and legal staff of the court.
- The system provides auto-generation of standard forms issued by the divisions or the court en banc. These forms allows quick identification of basic case information and recipients of court issuances based on the listed docket and party information and automatically generates such information in the pre-defined form. Users may choose to print the document or retain a draft until they are to be issued to parties. All printed court actions and notices are immediately saved in the system.

The Court of Appeals has also taken the initiative to set up a case inquiry system for the public. The public can now access case status information through the public kiosks stationed near the RCAs.

Objective 2.3 (b): Improved ability of the courts to monitor judicial performance and use judicial performance information

2.3.2 Improved speed in accessing performance information

In FY 2011, with CA CMIS installed and operational in RCAs, the presiding justice stationed in Manila is enabled to speedily access caseload and court performance reports for each division and justice. Where previous to CA CMIS installation the submission of reports from Cebu and CDO RCAs would always be delayed by more than a month at times, the ease in reporting discourages delays in the issuance of data.

Further, in FY 2012, ABA ROLI through its contractor, Ideyatech also programmed the integration of all RCA. Through the integration, data on caseload, performance information and case assignments, for example, will be accessible to the Presiding Justice for all Court of Appeals stations. The Court of Appeals provided a virtual private network (VPN) for the integrated system to ensure the security of the network used.

Figure 5. Merged Case Information from Three Stations of the Court of Appeals



SOURCE: Systems Requirement Specifications for Integration of CA CMIS, 2012

2.3.3 Court of Appeals able to Use Accessible Data to Improve Court Performance

The Court of Appeals is showing by example that automation of court processes is an effective tool for minimizing case backlog. Court of Appeals Presiding Justice (PJ) Andres Reyes Jr. told ABA ROLI that since installing CMIS, the court has been able to resolve all cases filed prior to the year 2000. In FY 2011, upon review of caseload and performance reports of the Court of appeals, PJ Reyes ordered the immediate disposition of old cases and requested that ABA ROLI redesign every justice's CMIS module to display statistics regarding aging cases on the system's dashboard. ABA ROLI completed the redesigned dashboard and had it installed in September 2011. This display helped prioritize cases that have passed the period for decision-making and encourage justices to aggressively resolve their cases without delay. By increasing the accessibility of this data the PJ is able to effectively monitor the performance of other justices and manage the court's docket.

In FY 2012, the Court of Appeals implemented the zero backlog project (ZBP) which targets the oldest cases in Court of Appeals dockets. In 9 months, the Court of Appeals was able to dispose 2,869 of their oldest cases comprising 8% of the total number of pending cases (22,904 in 2012) in the Court of Appeals.

Table 4. Court of Appeals Zero Backlog Project (ZBP) Cases and Disposal Rate, January – September 2012

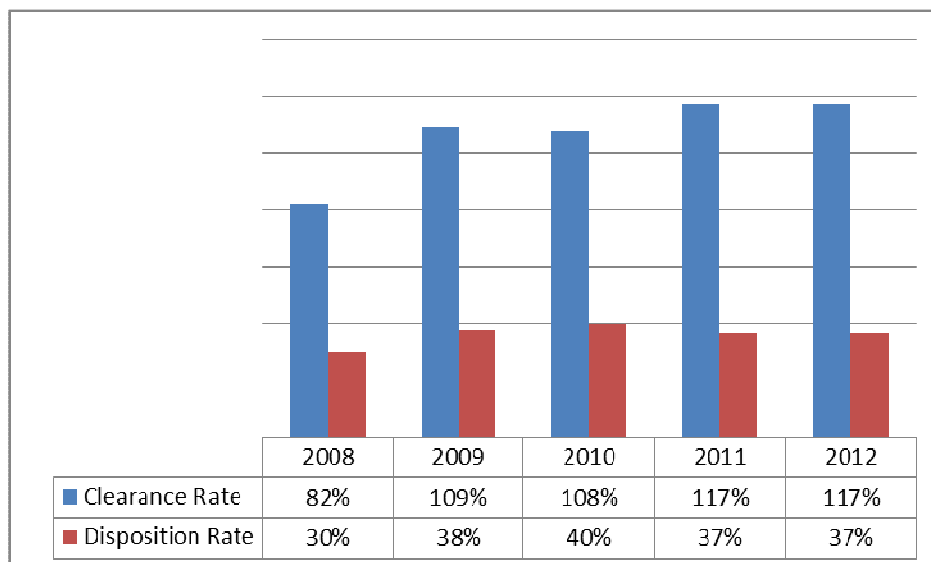
Stations	Identified ZBP Cases	Disposed ZBP Cases (Jan-Sep 2012)	Pending ZBP Cases (Sep. 2012)	Clearance Rate
Manila	1,600	1,209	391	76%
Cebu	262	229	32	87%
Cagayan de Oro	1,000	474	580	47%
Courtwide	2,862	1,912	1,003	67%

SOURCE: Court of Appeals Annual Report, 2008-2012

Objective 2.3 (c) Improved Court Performance Resulting From More Efficient Case Information Management and Increased Access to Court and Case information

2.3.4 Increase in Clearance Rate and Decrease in Clearance Index

Figure 6. Court of Appeals Clearance and Disposition Rate, 2008-2012

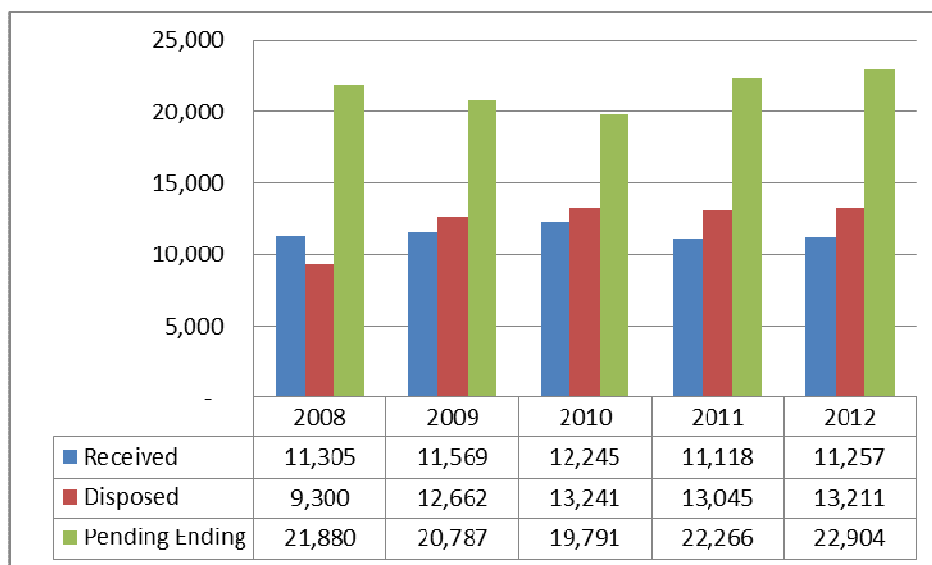


SOURCE: Court of Appeals Annual Report, 2008-2012

The Court of Appeals reports increasing clearance rates from 82% in 2008 to a high 117% in 2012. This means the Court is now able to dispose of as many cases it receives in each year. This increase in clearance rate has not yet impacted to increase in disposition rates for a few reasons. First, the

Court experienced a nominal increase in pending cases in 2011 and 2012 because of an increase of re-instated cases. The Court of Appeals reports 4,411 re-instated cases in 2011 and 2,592 reinstated cases in 2012 (based on the Court of Appeals Annual Report, 2010-2012). The Court of Appeals may have acted on the re-opening of archived cases following improved monitoring capacity provided under the CA CMIS. Second, the increase in nominal number of disposed cases has not yet reached such amount to significantly reduce the large number of pending cases the Court has been carrying for more than 10 years. Efforts to improve case processing time may need to continue for several years to show significant results in disposition rate.

Figure 7. Cases Received, Disposed and Pending at the End of the Year, 2008-2012



SOURCE: Court of Appeals Annual Report, 2008-2012

The clearance index has significantly gone down due to the increase in clearance rates in 2011 and 2012 in the Court of Appeals. The clearance index reflects the time (in this case, in terms of years) the court will take to dispose of its pending and incoming cases given its current clearance rate. From a clearance index of 20 years in 2010, in 2011 and 2012, the Court of Appeals has a clearance index of 12 years. This is a significant leap that may signify consistent decrease of clearance index and increase in disposition in succeeding years, should the Court of Appeals continue with its efficiency measures and the ZBP.

Table 5. Clearance Index 2008 – 2012 and Estimated Target Disposal Based on 5 Year Clearance Index

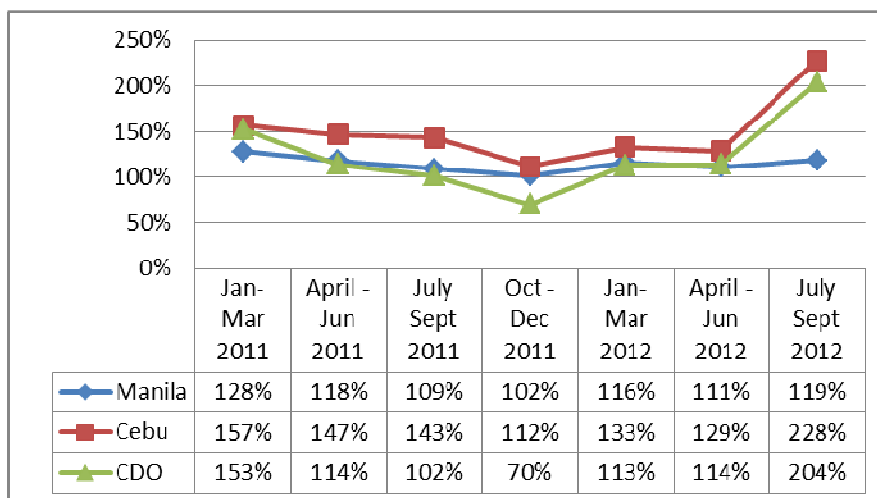
CURRENT CLEARANCE INDEX (BASED ON 2008-2012 DATA)							TARGET REDUCTION IN 5 YEARS		
Year	Pending Beginning	Received	Disposed	Pending Ending	Difference of Received and Disposed	Clearance Index (In Years)	Target Nominal Disposal	Target Clearance Index (In Years)	Difference Based on Assumed Clearance Index
2008	19,875	11,305	9,300	21,880	(2,005)		13,676	5	4,376
2009	21,880	11,569	12,662	20,787	1,093	19	15,726	5	4,157
2010	20,787	12,245	13,241	19,791	996	20	16,203	5	3,958
2011	24,202	11,118	13,045	22,266	1,927	12	15,571	5	4,453
2012	24,858	11,257	13,211	22,904	1,954	12	15,838	5	4,581

SOURCE: Caseload Data from Court of Appeals Annual Report, 2008-2012

Assuming the Court wants to reduce the clearance index to 5 years, the court should target a nominal increase of case disposal to more or less 4,000 cases, or a total average of 15,705 nominal disposals each year. In recent discussions, the Court of Appeals indicated that they feel they should target a far higher nominal disposal of about 20,000 cases per year, which will allow the Court to eliminate its pending cases within 2.5 years.

Notably in 2012, following the stabilization of CA CMIS in RCAs in Cebu and Cagayan de Oro, and the implementation of the Zero Backlog Project, RCAs in Cebu and Cagayan de Oro register a significant increase in clearance rate compared to the Central Office. Based on quarterly data provided in FY 2012, RCA Cebu’s clearance rate has reached 228% which and RCA CDO registered 204% clearance rate by September 2012. This development is promising in ridding of their current high pending cases. RCA Cebu and CDO account for 25% of the total caseload of the Court of Appeals as of 2012.

Figure 8. Clearance Rate of Regional Court of Appeals, January 2011 – September 2012



SOURCE: Court of Appeals Annual Report, January 2011 – September 2012

2.3.5 Decrease in length of time from filing to submission of Case for Decision

Case information recording, case status reporting, and raffling, as well as completion of records are mostly clerical functions affected by CA CMIS. Decrease in the length of time from filing to submission of case decisions may therefore indicate positive results stemming from CA CMIS and other procedural interventions during this period.

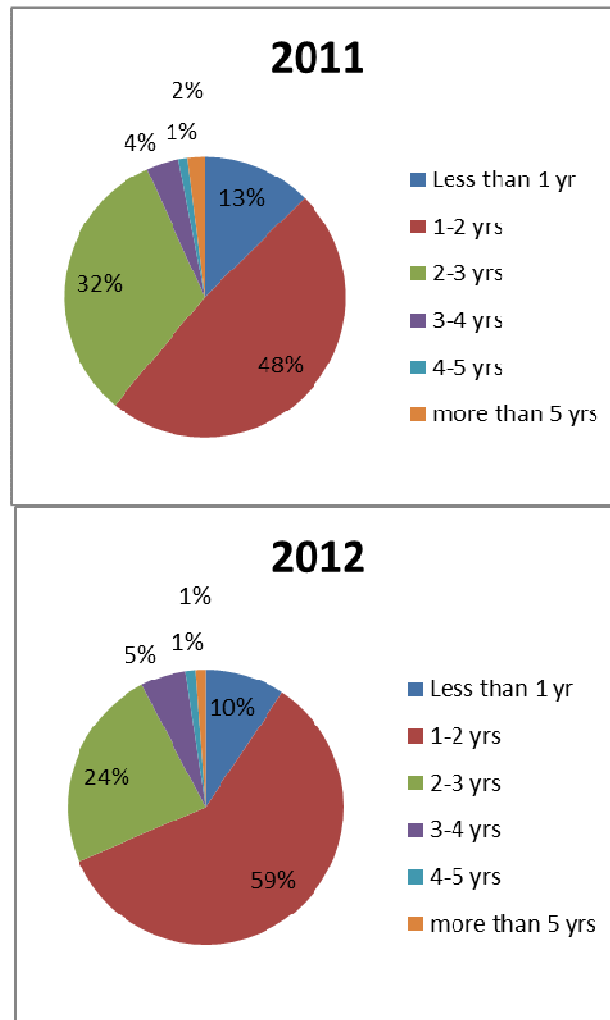
The total number of cases that fall within ranges of length of time from filing to submission of case for decision was assessed by ABA ROLI and the Court of Appeals using the flexible search module of the CA CMIS. A total number of 4,665 pending cases in 2012 and 4,493 pending cases in 2011 randomly selected were observed.

Data gathered through CA CMIS shows that only 1% of pending cases have a duration of more than 5 years from filing to submission of case for decision in both 2011 and 2012. 48% of pending cases in 2011 and 59% of pending cases in 2012 have a duration of 1-2 years from filing to submission of case for decision.

In 2011, 32% of pending cases fell under the 2-3 year duration from filing to submission of case for decision. By 2012, only 24% of the same was recorded. This may be seen as a positive shift of pending case duration from 2-3 years to 1-2 year duration from filing to submission of case for decision. This assumption is based on the same statistics that show that there are no significant increases in the number of cases that fall within the range of 3 years and above.

Studies made in 2005 show that Court of Appeals required an average of 2.6 years to decide cases. Knowledgeable observers attribute these delays to a combination of factors, including excessive judicial tolerance for delaying tactics, time consuming procedures, inadequate information management systems, shortages of judicial and non-judicial personnel (including prosecutors and public defenders), and (in the case of the appellate courts) the lack of clarity and consistency in the record of how previous appeals in similar cases were decided. Time limits prescribed in the Philippine Constitution and in legislation have encouraged the timely movement of cases through the courts. Nevertheless, the delays persist.

Figure 9. Percentage of Pending Cases Per Length of Time from Filing to Submission of Case for Decision, 2011 and 2012



SOURCE: CA CMIS, Court of Appeals, 2012

Result 2.4: Improved Administrative Measures of the Judiciary to Adjudicate Election Cases

Objective 2.4 (a): Proper allocation resources of the Judiciary for post-election litigation

2.4.1 Training and administrative recommendations by ABA ROLI Consultant Libertas considered and, in some cases, adopted by the court

Libertas, ABA ROLI's consultant released a study assessing the effectiveness of the rules for the 2007 Election (A.M. No. 07-4-15-SC), the sufficiency of pre-election judicial trainings, and the handling of election disputes in the judicial system. The study found that 95 of 187 designated first- and second-level courts (51%) handled election contests. While the judicial initiatives undertaken to prepare for the 2007 Election increased public confidence in the judiciary, the study cited some areas for improvement. Most judges who handled election cases did not receive formal training. Because election rules were published too close to Election Day to allow judges adequate time to become familiarized. Because of the lack of designated election courts, areas with large number of election contests were overwhelmed and unable to meet the 6-month deadline to resolve election contests while still adjudicating ordinary civil and criminal cases. Lastly, gaps in the monitoring process severely hampered efforts to properly review and assess the net effect of the new Rules. Given the results of this study and the new challenges posed by poll automation, Libertas, pursuant to its subgrant with ABA ROLI, released an Action Plan with a set of recommendations that was adopted by the Supreme Court in preparation for the 2010 Elections, including the following:

a. Revision of the rules of procedure for RTCs handling election litigation

The rules of procedure governing election adjudication in an automated system should be released months before the election. Amendments to the interim rules of procedure governing election disputes in a PCOS AES should include definitions of terms, guidance on machine and manual recounts, and rules on considering physical or electronic copies of the ballot.

b. Review of the policies designating election courts

The Supreme Court should review its rules and examine the possibility of relieving election cases from the raffle of ordinary civil and criminal cases to expedite their resolution. Specialized election courts should be designated in areas historically prone to election disputes and violence particularly provinces in the ARMM region and northern Luzon.

c. Training curriculum for judges

A Training Needs Assessment covering 90 respondent judges from the 12 judicial regions revealed that 72% have heard of the PCOS AES, while only 10% have received formal training. From a scale of 1 to 5, the average self-reported level of understanding of the system was 1.78. Pre-election training should be conducted for all trial courts especially in areas historically prone to election disputes.

Following this study, Libertas drafted and proposed a set of revised rules of court to govern election cases. To expedite the adoption and promulgation of these proposed revised rules, Libertas solicited the help of retired Court of Appeals Justice and former COMELEC Commissioner Teresita Dy Liaco Flores. Justice Flores, in turn, arranged meetings with retired Supreme Court Justice and former COMELEC Chairman Bernardo Pardo, who is the Chairman of the Supreme Court Sub-Committee on Rules, wherein she discussed the proposed revisions.

On April 2010, the Supreme Court promulgated A.M. No. 10-4-1 SC entitled the "2010 Rules of Procedure in Election Contests before the courts involving elective municipal officials," adopting en toto the revisions proposed by Libertas. Amendments incorporated to the rules include definitions of terms, guidance on machine and manual recounts, and rules on considering physical or electronic copies of the ballot.

2.4.2 At least one election court designated per election hotspot identified

Based on a 2007 Election Study, 95 or 51% of the 187 designated first and second level courts actually handled election contests. ABA ROLI recommended that courts belonging to provinces in the ARMM region and northern Luzon, historically prone to election disputes and violence, be designated as special election courts. As a result, the Supreme Court promulgated the new rules of procedure for election contests, authorizing over 950 Regional Trial Courts (RTCs) to handle election contests in the municipal level. It must be noted, however, that out of the 962 RTCs, in 2010, 192 (or 20%) vacant judicial positions were observed.

Objective 2.4 (b): Increased capacity of judges to understand new automated election system and complicated election issues, and able to quickly and efficiently adjudicate local election disputes

2.4.3 Appealed election cases affirmed by COMELEC or Supreme Court; and

2.4.4 Increase in election case clearance rate

Based on the 2007 study, available records in COMELEC show that out of the 103 cases appealed from the regional trial courts in relation to the 2004 elections, 66% of the cases have been terminated while 33% remain unresolved.

Records provided by COMELEC based on the 2007 elections reveal that out of the 76 cases appealed to COMELEC, 48 (or 63.1%) have been terminated and two withdrawn by the appellants. Out of the terminated cases, 29 (or 60.4%) have been dismissed by COMELEC thereby affirming the decision made by the trial courts. It must be noted that during the data collection and validation at the trial courts and COMELEC, some status of the cases were incomplete and not updated. Although more detailed information on other cases were not disclosed formally, informal talks with COMELEC officials would show that most appealed cases were dismissed.

As of June 30, 2011 (the cut-off date Libertas set for data collection on election disputes pending in the trial courts), the records of the Court Management Office (CMO) of the Supreme Court showed that 192 election cases had been filed in Regional Trial Courts across the country. This represents a 27.5% decrease in case filings from the 2007 election contests, in which 265 cases were filed. The sharpest decline was recorded in Region 9 (which covers parts of ARMM), from 48 in 2007 to 15 in 2010 — a 68.7% rate of decrease. Filings have increased in Region 8 from 10 to 25.

Election contests were filed in 29 of the 41 provinces previously identified as “election hotspots.” Despite being identified as hotspots, Aurora, Eastern Samar and Davao del Norte did not receive election contest cases for either 2007 or 2010 elections. In Maguindanao, where no cases were filed in 2007, 10 elections contest cases were filed in 2010.

Table 6. Election Contests in Election Hotspots (2007 v. 2010)

Provinces	2007	2010	Provinces	2007	2010
1. Abra	5	1	22. Sorsogon	3	1
2. Ilocos Norte	1	2	23. Eastern Samar	0	0
3. Ilocos Sur	5	2	24. Northern Samar	5	5
4. Pangasinan	8	4	25. Samar	2	2
5. Cagayan	2	3	26. Sulu	9	9
6. Isabela	3	0	27. Zamboanga del Norte	6	1
7. Kalinga	3	1	28. Zamboanga del Sur	4	0
8. Aurora	0	0	29. Agusan del Sur	3	3
9. Nueva Ecija	8	5	30. Misamis Occidental	2	1
10. Tarlac	1	1	31. Misamis Oriental	15	1
11. Batangas	12	9	32. Davao del Norte	0	0
12. Cavite	8	2	33. Compostela Valley	0	2
13. Mindoro Occidental	3	0	34. Davao Oriental	0	1
14. Mindoro Oriental	0	2	35. Davao del Sur	3	0
15. Quezon	4	4	36. South Cotabato	1	0
16. Rizal	1	1	37. Surigao del Sur	0	5
17. Albay	3	1	38. Lanao del Norte	3	0
18. Camarines Sur	6	0	39. Lanao del Sur	12	4
19. Camarines Norte	2	0	40. Maguindanao	0	10
20. Catanduanes	2	1	41. North Cotabato	4	4
21. Masbate	8	0			

SOURCE: Office of the Court Administrator, Supreme Court, 201

Most of the 2010 cases were stalled for a significant period of time, primarily due to difficulties validating ballots for vote recounts (discussed in more detail below). Data shows that as of June 2011, 116 (about 60%) of the election contests filed with the trial courts had been decided or terminated. 63 cases were dismissed due to improper filing form, failure to pay court fees/deposits, lack of timeliness, forum shopping, and lack of jurisdiction. It was noted that judges handling election contests computed the cash deposit differently. 13 cases were withdrawn by the complainants, and 35 have been resolved on the merits.

The 76 unresolved cases are in various stages, as shown below. 41 of the unresolved cases have been suspended, mainly due to the lack of machines needed for ballot verification.

Table 7. Status of Pending Election Contests in the Regional Trial Courts (as of 31 July 2011)

Stage of the Proceedings	Number of Cases	Suspended Cases
Preliminary Conference	18	6
Trial/Presentation of Evidence	9	1
Revision	43	34
Post-Revision Determination	1	0
Submitted for Resolution	4	0
Motion for Reconsideration	1	0
Total	76	41

SOURCE: Office of the Court Administrator, Supreme Court, 2011

The Supreme Court’s election rules set timelines for each stage of the proceedings. Based on CMO’s data, it is difficult to determine whether courts have met these timelines. Available data suggests the following:

- The summons was served within the 24-hour timeline in 78 of the 117 cases for which there are data regarding summons issuance.
- Preliminary conferences were held within the 3-day timeline in 3 of the 79 cases for which there are data regarding the preliminary conference dates. (There was some confusion regarding when the timeline began; clarification from the Supreme Court on computing this timeframe may be useful.)
- Decisions on the merits were reached within the 30-day timeline following submission for decision in 11 of the 13 cases for which there are data regarding submission and decision dates.
- Decisions on the merits were reached within the six-month timeline after case filing in 19 of the 35 cases already decided on the merits.

Judges surveyed by Libertas gave themselves an average rating of 2.74 out of 5 in terms of their compliance with the required timelines.

Of the 116 cases decided or terminated by Regional Trial Courts, 76 were appealed to COMELEC. An additional 25 cases were the subject of petitions for certiorari, prohibition, or mandamus before the COMELEC.

An apparent increase in clearance rate from 30% following the 2007 elections to 60% for the 2010 elections was observed, after efforts completed under the Project. However, 60% clearance rates do not necessarily translate to marked improvements in handling election cases. Proficiency of judges in handling cases and complying with the set rules, particularly with timelines, will need to be enhanced.

Result 2.5: Result Enhance CMIS features and management techniques at the Court of Tax Appeals, Sandiganbayan, and the Court of Appeals to increase judicial efficiency (the

enhancement features under this result area for the Court of Appeals was included in Result 2.3)

These projects were designed to enhance the CMIS of the CTA and to update the *Sandiganbayan* database of cases. In line with these objectives, ABA ROLI completed the following outputs under the project:

1. Identify, develop and install enhancements to the existing CTA CMIS
2. Conduct reorientation training for justices and staff to better utilize CTA CMIS
3. Train accountants and lawyers at CTA on how to properly assess damages and penalties in tax evasion cases
4. Update the *Sandiganbayan* database on all pending cases dating back to 1979.

Assistance to Sandiganbayan in Populating their CMIS

ABA ROLI and the Sandiganbayan assessed current conditions of the Sandiganbayan CMIS (SB CMIS) to determine how to provide the most needed technical assistance to ensure its smooth operation and integration into court procedures. One of the key issues identified by the Sandiganbayan User Workgroup Committee was the number of active cases not yet encoded in their CMIS. Without an updated CMIS, the court staff continues to rely on their manual records, thereby increasing incidents of unrecorded or outdated data. ABA ROLI was also concerned that the current CMIS system at the Sandiganbayan, installed over 5 years ago through a different implementing agency, was rapidly becoming problematic. To prepare the Sandiganbayan for an updated CMIS system, ABA ROLI helped them encode all their pending cases not yet in their database for eventual integration into the modernized system. The total number of cases not yet included in their CMIS had gone up to 9,066 active cases (including archived cases) dating back from 1979. ABA ROLI and the Committee agreed that assistance to the Sandiganbayan will include encoding updated case information of the 9,066 pending cases from 1979 to 2005, while Sandiganbayan staff encoded more recent cases (2006 to present).

ABA ROLI assigned an encoder and computers for each of the five divisions of the Sandiganbayan. Sandiganbayan oversaw the encoding of information on their CMIS from June 28 to the end of October. As a result of these efforts, all 9,066 active cases from 1979 to 2005 with updated information are now encoded in their CMIS, and are being used by respective divisions where these cases are assigned. Upon completion of the database of all pending cases, the Sandiganbayan has committed to keeping the CMIS database updated as incoming cases are added to the docket.

In recent meetings, ABA ROLI also suggested increasing case information the Sandiganbayan makes available through their public kiosk. ABA ROLI suggested including data on scheduled hearings, case status, and certain case events, considering the limited information the Sandiganbayan public kiosk currently affords the public. ABA ROLI feels that the Court will be encouraged to update and ensure their CMIS contains dependable data if it builds a culture of transparency and public accountability.

Assistance to the Court of Tax Appeals

The current version of the CTA CMIS has been fully operational for more than a year, after its successful design and implementation during FY 2011 under this grant. Its use has resulted in improvements with case processing time and how the court updates, monitors and reports its performance.

ABA ROLI through, its contractor Ideyatech, and the CMIS Workgroup Committee conducted extensive consultations and identified the following key enhancements for the CTA CMIS: (1) automatic generation of all clerk forms, where case information previously recorded appears on relevant portions of pre-defined forms, thereby reducing redundant encoding and ensuring consistency of case information; (2) an advanced search feature allowing customized inquiries; (3) the expansion of the “sheriff module,” to improve monitoring of delivery of summons and notifications by the sheriff; and (4) an IT helpdesk system that will record complaints on the system by issuing support tickets. The prototypes of the identified enhancements were presented on June 21, and on July 27 the final System Requirement Specifications (SRS) was approved by CTA. In the months of September to December 2012, the system was finetuned to rid of bugs, trainings were conducted, and the system went through users acceptance testing. On March 2013, CTA ‘s IT team confirmed that all modules were functional and ready for operation.

In May 2012, ABA ROLI, together with PhilJA held training sessions for CTA lawyers and accountants and national agencies such as the Bureau of Local Government Finance, the Philippine Export Zone Authority, the Bureau of Internal Revenue, and the Bureau of Customs. The curriculum was based on a training needs assessment (TNA) conducted with various stakeholders, not only from the CTA but also from other government and non-government taxation experts. The TNA for CTA accountants and financial experts was the first time PhilJA allowed non-judicial actors to participate in the development of training curriculum for court personnel – a telling sign that PhilJA recognizes that the private sector and executive branch agencies can help broaden the range of professional continuing education.

The training session was designed to improve understanding of taxation principles and to discuss emerging issues and problem areas in taxation. The training covered topics such as value added tax, the Ecozone, local and real property taxation, Philippine transfer pricing laws and related international guidelines, and customs and tariff laws. These subjects are focal areas identified by the TNA that impact on the assessments and recommendations developed by CTA accountants and researchers during CTA justices deliberations. The training also included a before-and-after diagnostic test using an audience response unit to assess improvements in the participants’ knowledge. Case studies and group discussion were integrated into the lectures to make the complex topics more interesting.

Overall Results:

Objective 2.5 (a): Increased capability to monitor court performance of Sandiganbayan

2.5.1 Live Generation of Updated Case Information in Sandiganbayan

The Sandiganbayan, through its SB CMIS, is now able to create a basic case record, scan case documents, prepare case event related documents, record schedules and case events, and monitor case processes.

With the updated case information, SB CMIS is now able to readily view case status, case events and documents received from parties and issued by the court. Quite different from the CMIS of the Court of Appeals and the Court of Tax Appeals the SB CMIS provides limited functionalities for reporting or monitoring court, division and justice performance. However, the assistance enables the Sandiganbayan to maximize case timeline and status monitoring. On October 2012, Sandiganbayan has reported live viewing of monitoring modules.

ABA ROLI's assistance to update case information of 9,066 cases in the SB CMIS means information on archived cases (considered by the court as disposed) will as well be ready should cases will be revived/ reopened. The Sandiganbayan has a total 2,192 pending cases by end of 2012.

Objective 2.5 (b): Increased capacity and efficiency of CTA lawyers and accountants to assess damages and penalties

2.5.2. Perceived Increase in Knowledge on Specific Topics of Trained Legal Staff and Financial Analysts of the Court of Tax Appeals

The trainings conducted by ABA ROLI were geared towards improving relevant knowledge of accountants and lawyers and thereby reducing time for research and assessment. The training focused on the following objectives:

- a) Specific controversial issues on local and real property taxation involving existing jurisprudence and emerging concerns;
- b) Emerging issues on VAT and other tax issues affecting ECOZONE locators and suppliers (e.g. tax base, royalties, documentary stamp tax, cross border doctrine, invoicing requirements and effect of R.A. 9337);
- c) Transfer pricing law and related international guidelines (e.g. OECD and US Models), its effects;
- d) Customs and tariff law, rules and regulations, and jurisprudence; as well as recent developments (e.g. WTO, the Kyoto convention, and related international agreements) in relation to existing legal and regulatory framework; and
- e) Latest relevant issuances of BIR and BOC interpreting and/or implementing tax laws

To gauge improvements in knowledge and skills of legal staff and finance specialists of the Court of Tax Appeals, ABA ROLI conducted interviews with 5 Justices and heads of the Tax Specialists

Division and the Legal Technical Services Division to whom trainees provide support services. The questions were structured to gather feedback for those who receive from trainees recommendations and reports based on financial and legal analysis. The following results were noted:

- Most of the respondents feel that their legal and financial analysts show improvements in skills and knowledge in rendering assessment and researches in select topics covered under the training. The table below outlines their response for each Topic or subject matter.
- Marked improvements in the accuracy of computations and assessment of refunds were noted in 75% to 100% of the trainees.
- All trainees were reported to show significant improvement in the identification of problematic issues, in developing recommendations based on solid analysis, and in overall knowledge on tax and taxation laws.
- All of the respondents note that their staff accomplish assessments and researches required of them within better and more reasonable time. 4 out of 7 respondents also say that researches and assessments are handed to them within 1-3 days from date of assignment after the trainings, whereas previous to the training staff would accomplish their work within 6-10 days.

**Table 8. Perceived Improvement in the Knowledge and Skills of Trainees
by Justices and Legal and Finance Division Heads of the Court of Tax Appeals**

Topic/ Area	Response
VAT and Ecozone	<ul style="list-style-type: none"> - 6 out of the 7 respondents say that their staff has increased their knowledge and skills in providing assessments/ researches in this area - Only 1 out of 7 report that while their staff show increased knowledge and skills in providing assessments/ researches there is a need to learn more or hone skills in this area
Local and Real Property Taxation	<ul style="list-style-type: none"> - 3 out of the 7 respondents believe that their staff has increased their knowledge and skills in providing assessments/ researches in this area - 2 out of 7 feel that their staff need more in-depth tooling in this area
Philippine Transfer Pricing Law and Relevant Intl. Guidelines	<ul style="list-style-type: none"> - 6 out of 7 respondents report that their staff has increased in their knowledge and skills in providing assessments/ researches in this area - 1 out of 7 reports that there was no opportunity to gauge knowledge and skills of staff in this area
Customs and Tariff Laws	<ul style="list-style-type: none"> - 6 out of 7 recognize that while their staff show increase in knowledge and skills in the area, they need to also learn more about the following: <ol style="list-style-type: none"> (1) Other relevant customs memorandum orders that may be subjected to scrutiny before this court (2) Administrative procedure and requirements arising from post-entry audit, importation, payment of taxes, seizure and forfeiture (3) Flow of transactions and applicable forms involve the administrative level arising from post entry audit, importation, payment of taxes, seizure and forfeiture (4) The document forms required to be filed at the custom house and the procedure of passing goods through the customhouse; and recent customs administrative orders and IRRs (5) Procedure required documentation from the time of importation up to the release of the imported goods; different valuation methods used by BOC

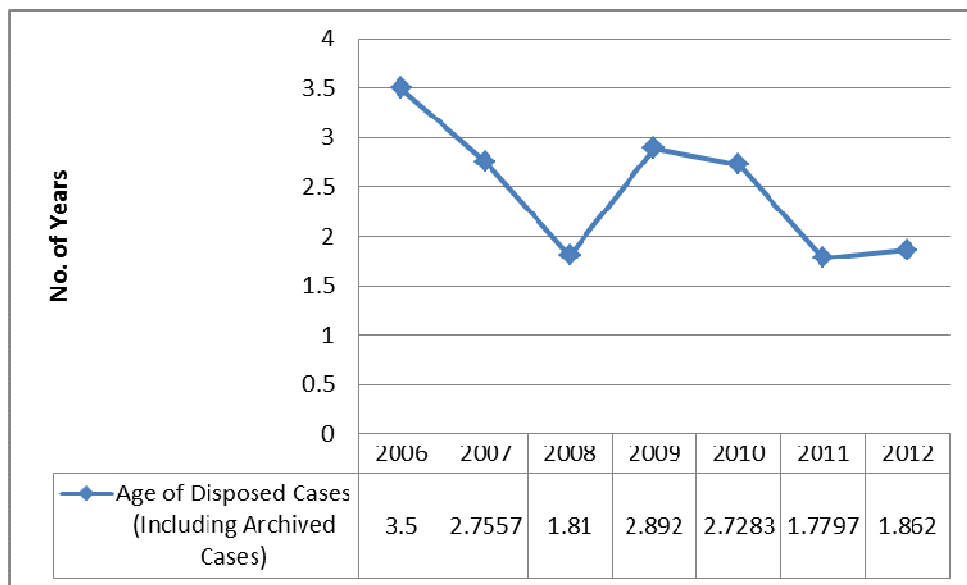
Objective 2.5 (c): Improve Speed of Case Disposal in the Court of Tax Appeals

2.5.3 Decreased Average Age of Cases in the Court of Tax Appeals

The Court of Tax Appeals has reduced its average case age from 3.5 years in 2006 to 1.8 years in 2012. Despite sporadic increases and decreases in average age of cases in years 2009 to 2012, 2012 has matched the lowest average age of cases recorded in 2008 (1.81 years).

Assistance provided by ABA ROLI sought to contribute to improving case processing time, specifically in addressing possible concerns in human resource capacity and in overall case management capacity. Initiatives to strengthen capacities of financial and legal analysts may show results in 2012 following noted improvements by justices and legal and financial support division heads in the Court. However, overall impact of CTA CMIS enhancements may not be realized until well into 2013, when the system has achieved full operation.

Figure 10. Court of Tax Appeals Average Age of Disposed Cases, 2006-2012

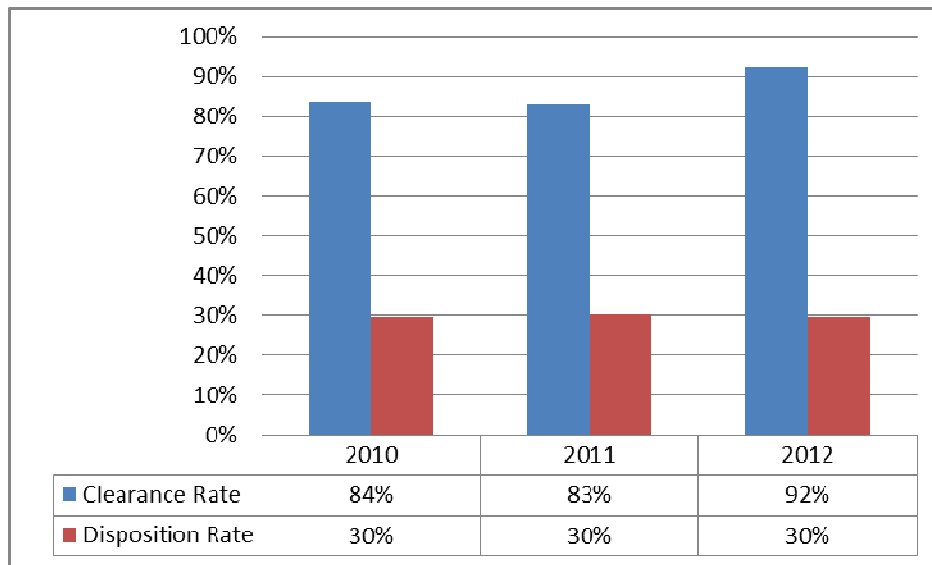


SOURCE: Court of Tax Appeals Annual Reports, February 2012

2.5.4 Increased Clearance and Disposition Rates

As the average age of cases decrease, clearance rates increase as well in CTA. Based on data provided from 2010-2012, the CTA has managed to improve its clearance rate by more than 18%. Impact to its current number of pending cases however has not yet been experienced. CTA maintains a 30% disposition rate in all three years observed.

Figure 11. Court of Tax Appeals Clearance and Disposition Rate, 2010-2012



SOURCE: Court of Tax Appeals Caseload Statistics Reports for 2010-2012, February 2013

Ultimately, quick gains may be observed based on statistical data of the CTA, showing increased clearance rates and improved average case processing time on the year trainings were provided to key financial and legal staff who provide research and assessments support to justices of the Court. Trainings must be further supplemented and CTA leadership must continue to introduce strategies to remove its rising number of pending cases to keep with its rapidly improving performance. Moreover, Sandiganbayan’s SB CMIS may now provide updated information that will enable justices and court clerks to monitor cases and case status. However, given limitations in the system, continuous updates may be difficult to sustain in the Court. The assistance provided through ABA ROLI may simply provide enough base information for eventual migration of data to an enhanced CMIS for the Sandiganbayan.

Result 2.6: Develop an Automated Case Management Information System (CMIS) for the Quezon City Trial Courts

The eCourt offers enormous potential in improving how Quezon City courts record, monitor and report case status and court performance. The eCourt is geared to speed up case tracking and processing and make it easier to extract case information and reports on court performance. Indicators of project results include: (1) updated case information in the eCourt; and (2) improved time required for docketing, tracking and performance reporting. Considering that the eCourt system is still in the process of completion, indicators set cannot be measured based on an installed and running system. The eCourt system and the courts’ operationalization of the database will need to reach stabilization, particularly on how the system is used and integrated in the courts’ current

work structure before suitable measurements can be made. The eCourt will be assessed under the subsequent JUSTICE Project funded by USAID.

Component outputs under the project include the following:

- Assessed current business processes of the court
- Completed procurement and deployment of hardware and network needs
- Developed programming for encoding case information and add this information to the database.
- Trained QC end-users and IT personnel on the new system
- Installed the approved system on the servers at the Quezon City Hall of Justice
- Developed a computer program for the Court Management Office (CMO) to receive information from the database

Objective 2.6: Improve case information recording and case management in Quezon City (QC) pilot courts

2.6.1 Reduce the number of steps to oversee cases and monitor case status/ activities

Currently, QC courts tend to review case status when there are calendared case activities on the same day. Further, updated case status may be compromised due to unrecorded return receipts, or undocumented service of court notices, summons and orders, and untracked number or frequency of continuance or postponements from parties.

Most of the Quezon City courts record received pleadings and other filings such as motions and notices from parties in several record books and some “tickler” sheets. Recording therefore becomes the main function of a number of court clerks to keep track of received files. Delays in getting updated case status is inevitable given this manual process.

The eCourt intends to reduce the number of times case activities are documented in several records. The system is built to provide one-time entry of received or issued case documents. Recording is accomplished at point of first entry for received case documents and at point of first printing of the document for court actions. Real time information is therefore fed in the system and allows judges and clerks of court to view immediately what has been received or issued.

Once the eCourt is fully operational the live generation or viewing of these real-time information will be completed to measure actual performance of the system.

2.6.2 Reduce the number of steps to complete performance reports

eCourt is built to provide tracking, case monitoring and performance reporting functionalities so that the QC courts may do away with tedious and multiple recording in manual logbooks. Based on interviews completed several logbooks serve to assist clerks in generating required caseload and

case inventory information. A total of 56 logbooks were noted in 2 MeTCs in Quezon City recording information on the types of cases that come in the branch, and other case filings received.

Ideally, eCourt should be able to replace manually completed records. This may happen upon full operation of the system and once clerks reach a certain level of confidence on the system.

Result 2.7: Pilot and Refine a Set of Practice Guidelines in Quezon City Trial Courts

The objective of the Quezon City Practice Guidelines Program (previously known as the Judicial Modernization and Process Management Program) is to improve judicial efficiency by quickening the pace of litigation in Quezon City courtrooms. ABA ROLI in collaboration with Quezon City judges, prosecutors, public attorneys, and private practitioners, developed a uniform set of procedure rules known as the “Practice Guidelines.” These rules, which will supplement the existing Rules of Court, include adaptations of some of the best practices of other jurisdictions. If successful, the Practice Guidelines may be implemented nationwide.

In its Resolution dated February 21, 2012, the Supreme Court *en banc* approved the Practice Guidelines (A.M. No. 11-6-10-SC), and on April 16, 2012, following compliance with posting and publication requirements, the Practice Guidelines officially took effect and was implemented in Quezon City courts.

ABA ROLI, in partnership with the Supreme Court and the Integrated Bar of the Philippines, has helped conduct five separate orientation seminars to familiarize the various stakeholders (*i.e.*, judges, court staff, prosecutors, public attorneys, and private practitioners) on the Practice Guidelines. The trainings were co-facilitated by TWG members from the Supreme Court, QC Courts representative, and ABA ROLI. 557 participants were oriented on the basic features of the Guidelines from March to July 2012.

Among the salient features of the Practice Guidelines are:

- Strict enforcement of rule on postponements and continuances (*i.e.*, no postponements save in cases of *force majeure* or acts of god);
- Limitation on page numbers of briefs and memoranda;
- Use of judicial affidavits in lieu of oral direct testimony (the “Judicial Affidavit Rule”);
- Strict observance of time periods prescribed in Speedy Trial Act;
- *Oral* offer of evidence, comments thereto, and rulings thereon (instead of written);
- Use of private couriers for service of pleadings and other court submissions; and
- Adoption of “presumptive notice” rule in cases where pleadings and other court submissions are served via registered mail.

Overall Results:

Case aging information is not readily available to establish 2011 baseline as well as to measure case processing time in Quezon City. Caseload data is limited, showing only 2011 baseline information. The 2012 caseload data is still being processed by the Supreme Court to form part of the overall caseload data database.

Thus ABA used a purposive sample frame to measure case processing duration in Quezon City Courts. Quezon City has 45 RTCs (out of which 7 are family courts, 4 are drug courts, 2 are special commercial courts, and 32 are regular courts) and 13 MeTCs, ABA ROLI provided a guided selection methodology that identified 8 RTCs and 4 MTCs for the data mining activities. Out of the 8 sample RTCs, 2 are family courts and 1 is a drugs court.

Based on data provided by Quezon City RTC Executive Judge Sagun, from April 16 (start of implementation of the Pilot Guidelines) – December 26, 2012, a total of 4,672 criminal cases, and 2,818 civil cases was assigned to respective court branches. The courts were asked to select a total of 5 civil and 5 criminal cases filed or revived from April 16-May 15, 2012. The team originally targeted 100 cases or 10 cases from each of a total number of 10 courts. However, some of the selected courts did not have enough cases to observe. Thus the team added 2 more RTCs and gathered data from a total of 76 cases. The total number provides a statistical sample of 1% of the total number of cases filed in Quezon City Courts. Data gathered on these cases reflect activities from filing to the last activity recorded on the case during the survey period. Surveys were conducted on October 19, 25 and 29, 2012 and February 7 and 8, 2013. Criminal and civil cases observed have an average age of 194 to 196 days (or 6-6.5 months) on the date the survey was conducted. Thus most of the cases observed reached only pre-trial stage. Measurements therefore allowable using limited data will focus on potential impact of the Pilot Guidelines to pre-trial stage.

Follow up focused group discussion was also conducted on March 2013 to clarify compliance concerns and other conditions that may characterize impact of the Pilot Guidelines. ABA ROLI collated survey results and FGD results to complete a mid-term review of the pilot guidelines.

Objective 2.7: Increase case resolution efficiency in Quezon City courts

2.7.1 Reduce overall case processing time

Courts that have completed pre-trial record an average length of time from filing to completion of pre-trial conference (PTC) of 99 days for civil and 144 days for criminal cases.

The courts showed low compliance on the Rules on Postponements during pre-trial period. While data show low compliance on the rules on postponements, judges and court clerks surveyed claim that they rarely grant postponements that are not based on force majeure. Based on FGDs conducted with judges and branch clerks of court, it appears that there is no consensus on what force majeure situation is. For some, this includes family emergencies and absence of counsel during arraignment, among others. Some judges have also stressed that litigants cannot be prejudiced for humanitarian reasons, such as getting into an accident the day before trial. Some judges voiced out that the following also merit postponement: conflict of schedule of lawyers, witness not being able to attend, absence of lawyer and de officio lawyer is not familiar with the case. The Guidelines however are very clear on the only grounds when postponements are allowed.

In criminal cases, arraignments settings were limited to an average of 1-2 settings in majority of observed criminal cases. However, the average duration from filing to arraignment where pre-trial conference has not yet ensued is 73 days which is already over the number of days specified by the guidelines. Despite a 95% compliance efficiency to the provision on Suspension of Arraignment, courts experience significant delays in both RTCs and MeTCs during the arraignment stage. The courts noted in interviews that they are unable to set arraignment within the required 7 days for detained accused and 20 days for non-detained accused due to unavailable schedules in court calendars and delays in service of summons for both detained and non-detained accused. Notices filed by the court on scheduled arraignment date do not push through due to failure of service. During the FGDs, clerks of courts as well as judges of MeTCs say that failure of service is an issue often experienced by their courts. With only one process server assigned per MeTC branch, with an daily average of 50 cases requiring service. The use of presumptive notice for failure to appear of non-detained accused in RTCs was noted to be relatively easier however since they are presented with bailbonds. In MeTCs however, most cases do not have return receipts and therefore presumptive notice is not applicable. Where the provisions on Suspension of Arraignment enjoy high compliance, clerks of courts report that the prosecutors often fail to meet the 60 days provision for suspension of arraignment but are provided lenience due to considerations on their workload and issues internal to the DOJ.

In civil cases observed both in RTCs and MeTCs almost 70% of the cases have not yet completed exchange of pleadings. Thus the overall age of pending cases that are still in the exchange of pleading stage has reached a mean running duration of 156. The Pilot Guidelines explicitly limit the types of pleadings that may be filed in a case. However, while the judges and court clerks report high compliance to this rule (99%) has reduced the time for exchange of pleadings in all sample courts, parties are also observed to file motion for reconsideration which the judge feels the court is obligated to grant. According to clerks of courts of RTCs, motions for reconsideration are filed in almost 60% of their cases, when provisions under the Pilot Guidelines on Pleading Limitations are strictly implemented. The filing of motions for reconsideration therefore tend to lag the case .

In almost 40% of courts, the use of court annexed mediation is required and failure to appear to mediation procedures of the Philippine Mediation Center (PMC) and Judicial Dispute Resolution (JDR) is cause for court sanction in civil cases and criminal cases where applicable. The survey does not provide conclusive information on the duration from filing to mediation considering that most cases are still in the exchange of pleadings stage. However, judges and clerks of court during the FGD note that a considerable amount of days are spent for scheduling mediation activities, and that most mediators fail to report immediately on the results of mediation. The court therefore relies on parties to inform the court on the completion of mediation activities, until a notice/ report is issued by the PMC. The failure of PMC to report upon mediation completion thereby reduces the court's ability to schedule preliminary and pre-trial conference immediately.

After 1 year of implementation (on April 2013) a final review of the Practice Guidelines will ensue under the JUSTICE Project funded by the USAID to gather more information on the impact to case processing time and court efficiency of the Pilot Guidelines.

Result 2.8: Enhance Audit Inventories of Trial Courts with Anomalous Caseloads to Cleanse Dockets of Stale or Inactive Cases and Promote Judicial Accountability

The Supreme Court’s Office of the Court Administrator recognizes the need to audit lower courts’ performance to identify causes of court inefficacy. This recognition led to the Case Decongestion and Delay Reduction Program (CDDRP) (previously known as the “case purging project”). With technical assistance from ABA ROLI, OCA has audited and continues to audit some of the most underperforming courts across the nation. OCA and ABA ROLI have also been working on an electronic docket inventory system and performance criteria for trial courts.

OCA’s lower court audits are conducted to spot-check issues and constraints to effective case management. The audits include reviews of areas in which case delay and court congestion can occur, such as (1) court practices; (2) adherence to rules and procedures; and (3) management of workload. Courts considered for audits are characterized by their high caseload and low disposition and clearance rates, among other factors.

On October 2011, OCA and ABA ROLI approved the plan for conducting spot audits of 10 regional trial courts and 7 first level courts throughout the country, for a total of 17 courts.³ OCA judicial supervisors, or attorneys assigned to monitor court performance, and their assistants carried out the audits by the end of March 2012. The participating courts included the following:

Table 9. List of Audited Courts under the CDDRP, FY 2012

DATE AUDIT WAS COMPLETED	COURT	LOCATION
January 17, 2012	RTC Branch 61	Barili, Cebu
January 19, 2012	RTC Branch 60	Bogo, Cebu
February 7, 2012	MeTC Branch 54	Navotas
February 15, 2012	RTC Branch 19	Bacoor
February 16, 2012	RTC Branch 89	Bacoor
February 22, 2012	RTC Branch 24 and 25	Binan
January 26, 2012	Branches 71, 72, and 74	Antipolo
March 2, 2012	Branch 3	Nabunturan, Compostela
Nov. 24, 2011	Branch 59	Mandaluyong
February 7, 2012	Branch 54	Navotas
	Branch 77	Paranaque
Nov. 24, 2011	Branch 68 and 72	Pasig
Jan. 27, 2012	Branch 76	Marikina

³The Branch 2 court in Butuan was considered for a spot audit, but it was excluded from the final list of courts because the judge passed away.

During the initial implementation in October – December 2011, ABA ROLI and OCA noted difficulties in gathering and using current inventory reports for the audit. Courts were given two weeks to prepare and submit a revised inventory of cases, but some courts did not submit and others did not comply with the data requirements. On December 2011, ABA ROLI and OCA considered the challenges and discussed possible solutions and strategies to continue the planned spot audits.

As a result, to increase the effectiveness of the spot audits, OCA and ABA ROLI jointly developed an enhanced inventory system to serve as a tool for recording court case information. The enhanced inventory form records information such as trial dates, number of postponements per party, compliance with court procedures, and other data which was not included in previous case inventory forms. The enhanced inventory form was used for the spot audits of all 17 courts. The initial review of audit findings and inventory reports suggests that the enhanced inventory system has been effective in identifying the sources of case delays and in exploring potential remedies. Judges and court staff accepted the statistical findings in the inventory reports and demonstrated their willingness to comply with the auditors' recommendations. This sense of cooperation has facilitated docket management planning.

Docket management plans were developed in concerted effort between judicial supervisors and the courts. The process included a review of case inventories and caseload statistics, identification of issues that contribute to delays, and development of court strategies to address these issues. At the end of the planning process, courts signed into a commitment to work on a particular action plan to address issues they have identified.

In 2012, realizing difficulties experienced by the courts in encoding and maintaining the inventory of their cases, ABA ROLI developed a stand-alone data entry system for CDDRP target courts as an add on assistance under the project. The data entry tool served two purposes: (1) to assist the courts in preparing the enhanced inventory reports; and (2) to serve as a monitoring and data processing tool that enables quick computations of known indicators. The system was deployed in courts on September 2012 but posed serious issues in encoding and processing data. Thus, data entry of 2012 civil and special case data was not achieved in December 2012 as originally planned.

ABA ROLI nevertheless proceeded in the performing an impact review based on available 2011 and 2012 data. ABA ROLI processed available data under inventories: encoded 2011 inventories of civil, criminal and special cases; and encoded 2012 inventories of criminal cases. The inventories covered only the 13 courts (7RTC's and 3 MeTC's) that participated in docket management planning, out of the former 16 audited courts.

Overall Results:

Objective 2.8 (a): Reduce backlog in selected courts

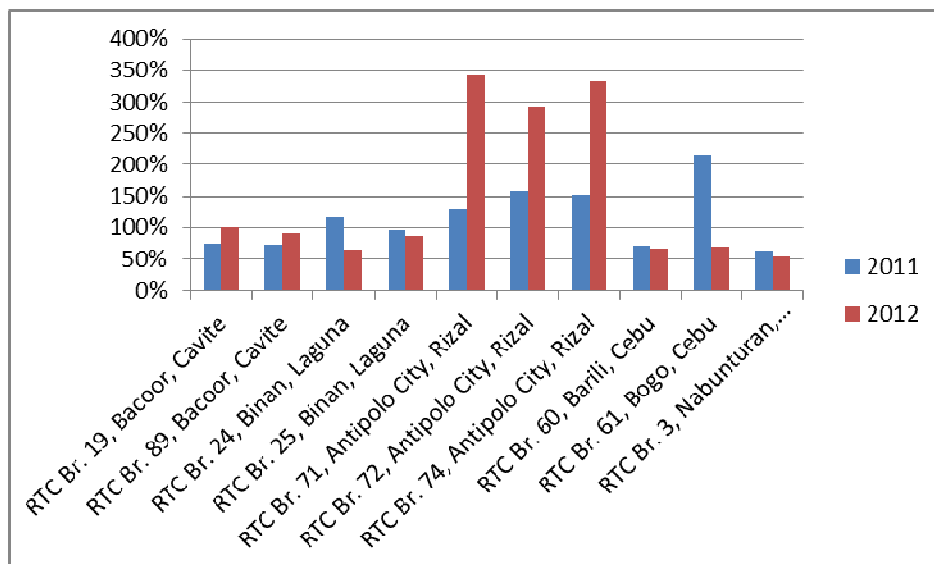
2.8.1 Increase Clearance Rates

The caseload of the initial 16 courts that were audited and who completed case decongestion planning was observed to gauge the results of the audit – decongestion planning process completed by the courts.

A marked increase in clearance rates of 5 RTCs out of 10 RTCs is apparent using 2011 and 2012 data. The three RTCs from Antipolo City, Rizal (Branches 71, 72, and 74) enjoyed an exponential increase in clearance rate. This is largely because new courts were created in the City where 20-25% of their pending cases were transferred to the new courts in 2012. Antipolo Courts has case inflow in 2011, recording a total (among the three courts) of 2,308 cases. In 2012, Antipolo Courts experienced a rapid decrease of total case inflow (among the three courts) to 718 cases. They register 69% decrease of total case inflow among the three courts.

The other 2 courts from Bacoor Cavite (Branch 19 and 89) also experienced a huge decrease in case inflow. From a former overall total of 2,334 (from both courts) case inflow in 2011; in 2012, 1,308 came in the court. The total caseload of the court has decreased by 44% in a year and thereby greatly contributed to the decrease in their caseload.

Figure 12. Clearance Rate of Selected Regional Trial Courts Under CDDRP, 2011-2012



SOURCE: Court Management Office, Office of the Court Administrator, February 2012

Courts that experienced a decrease in clearance rate show similar attributes as well among them. Overall, the five courts experience a 48% decrease in case outflow. In one court, RTC Branch 24 Binan, Laguna the 20% decrease in case outflow is matched with a rapid increase of 22% in case inflow. This means that the court's caseload has greatly affected the court's clearance rate. However, in all four of the remaining court branches (Branch 25 Binan, Laguna, Branch 60, Barili Cebu, Branch 61 Bogo Cebu, and Branch 3 Nabunturan Cebu), low productivity was experienced despite decrease in case inflow. In one court, Branch 60, Barili Cebu, despite a decrease of 79% from its former case inflow, it was only able to dispose as low as 165 cases out of the total 248 that entered its dockets in 2012. In 2011, Br. 60 Barili Cebu was able to dispose of 853 cases out of its 1,194 case inflow.

3 Clerks of Courts reported during a concluding meeting in March 2013 that the sheer volume of their caseload hinders them from processing cases faster. These courts experience high number of continuance, handling roughly, 25-30 case hearings in a day. These clerks of courts come from Binan Laguna Branches (Branches 24 and 25), and Bacoor Cavite Branch 89, which based on statistics have an annual average case inflow of 1,411 cases, 1,365 cases, and 967, respectively, and have the highest case volume among all RTCs.

Table 10. Caseload Statistics of Regional Trial Courts Under CDDRP, 2011-2012

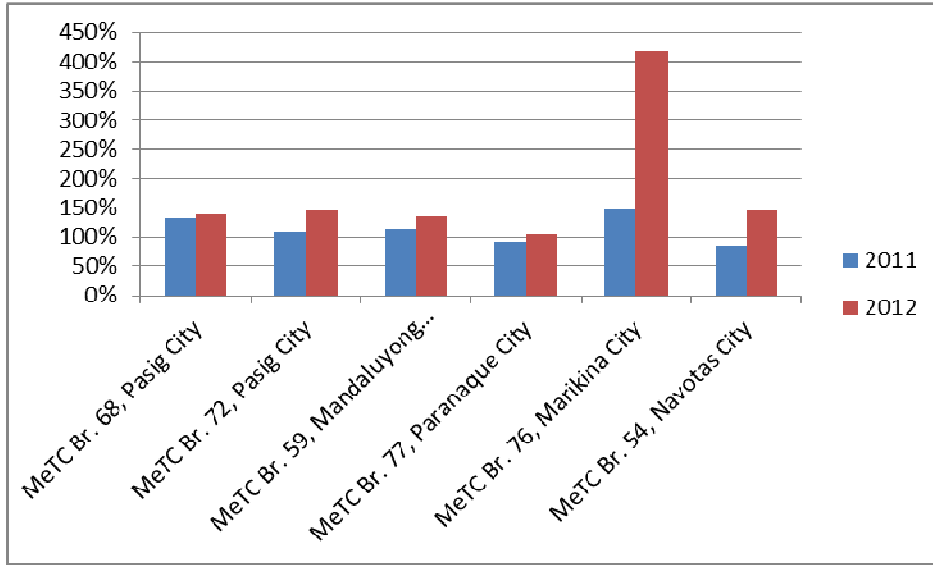
Court	2011				2012			
	Pending Beginning	Case Inflow	Case Outflow	Pending Ending	Pending Beginning	Case Inflow	Case Outflow	Pending Ending
RTC Br. 19, Bacoor, Cavite	3,745	1,094	809	4,030	4,030	615	622	4,023
RTC Br. 89, Bacoor, Cavite	1,514	1,240	915	1,839	1,839	693	626	1,906
RTC Br. 71, Antipolo City, Rizal	3,300	820	1,052	3,068	3,068	229	786	2,511
RTC Br. 72, Antipolo City, Rizal	2,405	701	1,106	2,000	2,000	311	909	1,402
RTC Br. 74, Antipolo City, Rizal	3,254	787	1,201	2,840	2,840	178	591	2,427
RTC Br. 24, Binan, Laguna	1673	1269	1476	1466	1466	1553	1021	1998
RTC Br. 25, Binan, Laguna	1498	1446	1384	1560	1560	1285	1104	1741
RTC Br. 60, Barili, Cebu	2215	1194	853	2556	2556	248	165	2639
RTC Br. 61, Bogo, Cebu	2694	615	1323	1986	1986	509	346	2149
RTC Br. 3, Nabunturan, Compostella	2612	799	502	2909	2909	501	270	3140

SOURCE: Court Management Office, Office of the Court Administrator, February 2012

NOTE: Case Inflow includes cases received, revived/ re opened, and received from other branches
Case outflow includes cases disposed, archived, and transferred to other branches

6 MeTCs under the CDDRP show increased clearance rates from 2011 to 2012. All of the MeTCs experienced significant decrease in case inflow in 2012, and maintained the total number of case outflow it has from 2011 with a mere 8% average difference from 2011. In a meeting held with Branch Clerks of Court several strategies were identified to contribute to their high clearance rates: (1) early preparation of case antecedents to provide recommendations for court actions; (2) improved management of trials through set sanctions on postponements and non-appearance and prescribed timelines during pre-trial stage; (3) stricter implementation of required mediation referral for civil cases; (4) effective use of pre-trial and preliminary conferences; and (5) continuous knowledge sharing and training of personnel to hone skills in recording and providing accurate information on cases from initiation.

Figure 13. Clearance Rate of Metropolitan Trial Courts Under CDDRP, 2011-2012



SOURCE: Court management Office, Office of the Court Administrator, February 2012

Objective 2.8 (b): Improve the capacity of the Office of the Court Administrator in conducting diagnostic audits and identify obstacles to case disposition

2.8.3 Improved level of information to support diagnostic audits

Based on discussions made and perception survey responses from judicial supervisors, 3 out of 3 respondents feel that the inventory tool has helped them in assessing court delays in specific stages. The introduction of more than 30 data in the inventory allowed the judicial supervisors to provide in-depth assessment and develop recommendations to increase clearance rates.

Objective 2.8 (c): Strengthen capacity of courts to work on strategic measures and practices to address case delay and docket congestion

2.8.4 Docket Management Planning Process Completed by Courts

Based on a perception survey completed by ABA ROLI and the Supreme Court Program Management Office all 11 respondents report that the docket management planning process allowed the courts to work on addressing factors that delay case processing. Prior to CDDRP the BCCs note that courts judges and staff were too busy just completing their duties without reflecting and acting on the issues they observe. All clerks of court intend to continue the process to sustain efforts they have initiated under the CDDRP.

The process is spearheaded by the Judicial Supervisors who work collaboratively with the courts in identifying measures that will provide solutions for factors that affect delays in court. The docket management plan format provides for direct correlation of issues to particular strategies in key

stages of the case, so that information gathered under inventories are duly considered in the development of the plan.

2.8.5 Courts Continue to use the inventory tools to assess issues in case delay and backlog

Based on a perception survey conducted by ABA ROLI and Supreme Court Program Management Office, most or 9 out of 11 respondent branch clerks of courts (BCCs) see the value of the inventory and recommend its use to all courts in tracking case delays and potential issues. While 7 out of 10 respondents report that the inventory is tedious to complete, 9 out of 11 also report that the inventory has in fact enabled the courts to strategically pinpoint where efforts to reduce delays should be directed.

Out of the total 11 respondents, 7 report that they will continue using the system to monitor progress in reducing delays.

2.8.6 Reduce case processing time

Case processing time for criminal cases was compared from 2011 – 2012 inventories. After one year of implementing the docket management plans in selected 13 courts, the following were observed:

- The average number of days for pre-trial in criminal cases (including arraignment) had decreased from 607 days in 2011 to 582 days in 2012.
- The average number of days for decision in criminal cases has decreased as well from 175 days in 2011 to 124 days in 2012.
- The average number of days for trial however increased by 13%, from 1,269 days in 2011 to 1,305 in 2012. Most of the increase in days are noted during presentation of evidence .
- The overall average duration of cases show a slight increase of 11%, recording 1,169 days in 2011, and 1,305 days in 2012.

While there is improved information and processes, the following recommendations are provided to improve assessments drawn and court strategies developed to address delays: (1) base analysis of factors that affect delays on a more in-depth statistical analysis to specifically arrive at well-targeted solutions; (2) increase sharing among courts on practices to reduce delay in cases and to manage large dockets so that courts may use best practice strategies employed in similar settings/ conditions; and (3) employ standard practices and strategies, and stick to the plan, especially in ensuring timelines are met and compliance of parties are addressed.

Result 2.9: Promote the use and effectiveness of Alternative Dispute Resolution (ADR) to accelerate commercial dispute resolution and reduce case burdens on courts

Alternative dispute resolution (ADR) mechanisms such as arbitration can provide efficient, speedy, and relatively low-cost resolutions to commercial disputes. ADR in the Philippines is being

developed to help reduce court caseload while encouraging and increasing the confidence of the public to engage in commercial investments and activities. ABA ROLI sought to promote the use of ADR by building the capacity of the Office of Alternative Dispute Resolution (OADR) of the Department of Justice to serve as a national resource on ADR for the promotion of and training on ADR mechanisms. ABA ROLI also trained government lawyers on ADR to enhance the use of ADR.

In FY 2012, ABA ROLI supported the training of key government lawyers on ADR and provided technical assistance to develop standards for accreditation and training of ADR providers. ABA ROLI also supported the training of key government lawyers on ADR.

ABA ROLI and the DOJ held a training seminar on March 12-16 in Tagaytay to strengthen the ADR capacity of lawyers and staff from OADR, Office of the Solicitor General and the Office of the Government Corporate Counsel. Around 50 participants learned about arbitration laws, rules, and procedures through lectures and mock arbitration exercises. Thirty-nine participants took and passed the training's final exam, consequently obtaining certification as arbitrators of the Philippine Dispute Resolution Center, Inc., a private ADR institution that helped to conduct the training. The curriculum focused on the government arbitration procedures under Presidential Decree 242 and the special concerns of government lawyers engaged in arbitration.

The OADR was created through Republic Act No. 9285 (2004) to promote and develop the use of ADR in the private and public sector, and recommend statutory changes for improving ADR practices in accordance with international standards. The Act requires OADR to formulate accreditation and training standards for ADR practitioners and service providers. To assist the OADR in fulfilling their task, ABA ROLI contracted Filipino arbitration expert, Attorney Salvador Panga, to lead OADR's efforts to develop accreditation and training standards for ADR providers.

In April and May 2012, OADR and ABA ROLI convened three information campaigns and consultation conferences on draft training and accreditation standards in Luzon (Manila, April 13), Visayas (Cebu, April 26), and Mindanao (Davao, May 14-16). In June 2012, Attorney Panga completed a draft of accreditation and training standards for ADR practitioners. Approximately 60 arbitrators, mediators, government lawyers, and other ADR stakeholders attended each of these events to provide feedback and recommendations on the standards. OADR and ABA ROLI continued to receive comments from stakeholders via email through June and July when they were finalizing the standards through a series of long and intensive meetings. On August 17, 2012, the Secretary of Justice, Hon. Leila de Lima, approved and signed DOJ Circular No. 088 covering the final OADR accreditation and standards. Approximately 100 participants composed of Court representatives, commercial law practitioners, business representatives, ADR providers, and government arbitrators attended the event at the Shangri-La Hotel in Makati City.

Under the OADR standards, OADR accreditation is mandatory for government agencies conducting ADR and for ADR provider organizations (APOs) that supply ADR services to government agencies. It is not required for providing ADR services in private commercial disputes. The approved standards comprise the following: (1) accreditation requirements for ADR Provider Organizations;

(2) Statement of Principles for Accredited ADR Provider Organizations; and (3) Proposed Training Standards for ADR Practitioners. Minimum requirements include websites that provide full disclosure of the APO's basic information, including ADR services, roster of neutrals and fees, and ethical standards and recourse mechanisms. APOs are also required to adhere to the Statement of Principles and the Training Standards.

The Statement of Principles stipulates the ethical responsibilities and quality assurance standards on services rendered by ADR providers. The Principles were drawn from guidelines developed by the CPR-Georgetown Commission on Ethics and Standards for Practice in ADR and the National Alternative Dispute Resolution Advisory Council (NADRAC), an independent body that advises the Australian Government on the use and promotion of ADR. Key components of the Statement of Principles include quality and competence in neutrals; confidentiality of ADR process; neutrality, fairness, independence and impartiality; adoption of ethical standards; adoption of grievance mechanisms; transparency; and provision of statistical and other information to OADR.

The training standards call for, among other requirements, a detailed list of topics that the trainings should cover in order to impart the minimally acceptable level of ADR knowledge and skills, at least 40 hours of training, and a written test or skills assessment of training participants.

On July 4, 2012, President Aquino signed Executive Order (E.O.) No. 78, entitled "ADR Mechanisms in Public-Private Partnership (PPP), Built-Operate-Transfer (BOT) Projects, Contracts, and Joint-Venture Agreements (JVAs)." This order generally provides for ADR use in a large number of government contracts, and ABA ROLI expects current ADR use patterns to change.

On October 18, 2012, President Aquino signed Executive Order No. 97, which formally institutionalized the OADR as the agency responsible for managing and developing all government ADR programs. Under the Order, which was drafted in the course of finalizing the accreditation and training standards, executive agencies are required to submit periodic reports to OADR on their respective ADR programs and recommend to OADR procedures to reduce delay in decision-making and improvements in ADR laws and practices. OADR must also submit an annual report of its activities to the Office of the President. With these institutional developments, the Philippine Government has laid the foundation for the expansion of the use of ADR in the country in line with international standards.

OADR will commence accreditation processes in December 2012 and, with simultaneous public outreach by OADR, ABA ROLI expects to see a demonstrable increase in the quality and quantity of ADR practice within six to twelve months. Faster disposition of cases conducted under ADR is also expected in the medium to long run as OADR incorporates recommendations to reduce the time of disputes resolved through ADR.

Overall Results:

Objective 2.9: Enhanced capacity of the OADR to serve as a national resource on ADR

2.9.1 OADR develops accreditation and training standards as it performs its functions as national resource on ADR

The Project provided tools and trainings to enhance the capacity of the OADR to serve as a national resource on ADR. As noted, 39 participants in the March 2012 training have become certified ADR practitioners of the Philippine Dispute Resolution Center, Inc. The executive orders that arose from this program are strong indicators of the program's success. EO 97 has defined the two crucial aspects in implementing the accreditation and training standards developed: (1) the use of the standards, specifying that all government ADR providers, including private ADR providers who wish to work with government needs to be accredited; (2) the authority of the OADR in accreditation and in overseeing all ADR in government.

OADR finalized its operating guidelines and will commence accreditation processes in 2013 and, with simultaneous public outreach by OADR, ABA ROLI expects to see a demonstrable increase in the quality and quantity of ADR practice within six to twelve months. Faster disposition of cases conducted under ADR is also expected in the medium to long run as OADR incorporates recommendations to reduce the time of disputes resolved through ADR.

Result 2.10: Increase efficiency and consistency of decisions of Special Commercial Courts (SCC)

Special Commercial Courts (SCCs) are tasked with handling intellectual property cases, petitions for bankruptcy, corporate rehabilitation cases, and disputes formerly handled by the Securities and Exchange Commission (SEC). In FY 2012, ABA ROLI helped the Office of the Court Administrator or (OCA) address the deficiencies of these courts, particularly with regard to their ability to properly issue temporary restraining orders (TROs) in commercial cases and the court's ability to handle complicated, high-impact intellectual property disputes. Specifically, ABA ROLI assessed the causes of inefficiencies and delays in case resolution, conducted training on the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, and reviewed best practices for adjudicating commercial disputes.

Overall Results:

ABA ROLI instituted training and a manual for SCC judges to improve the SCC court performance and case management capacities through the adoption of modernized and standard processes. Indicators to measure this result include the following: (1) increase in disposition and clearance rates; (2) Percentage of SCC judges reporting improvements in handling of SCC cases.

Considering that the trainings have just been concluded in August, 2012, and that the Manual is yet to be approved, intermediate results are provided to measure project performance.

Objective 2.10: Improve knowledge and skills of SCC judges in handling commercial cases

2.10.1 Percent of SCC judges who report improved knowledge in key areas they have identified as “training needs”

A survey was conducted by PhilJA in coordination with ABA ROLI staff on whether the trainings provided substantial knowledge in subject matter areas they themselves identified. 100% of the trainees found the training helpful. 55.6% of the participants gave an excellent rating, and 44.44% a very good rating considering the curriculum, training methodology, and the expertise of the trainers. During the training, SCC judges were provided all powerpoint presentations and outputs of the workshop in CD format. Basic materials were provided as part of their kit, including the following:

- Financial Rehabilitation And Insolvency Act (FRIA)- R.A. 1014
- Procedural Guidelines For Rehabilitation Cases
- CRE: Proposed Interim Rules Of Procedure Governing Intra-Corporate Controversies Under R.A. NO. 8799 [A.M. NO. 01-2-04-SC March 13, 2001]
- Corporation Code [BATAS PAMBANSA BLG. 68]
- Securities Regulation Code (R.A. 8799)
- SEC Reorganization Act (P.D. 902-A)
- SEC Code Of Corporate Governance Memorandum Circular No. 06 Series of 2009
- Anti-Money Laundering Act (AMLA)-R.A. 9160, R.A. 9194, R.A. 9194 IRR
- An Act To Further Strengthen The Anti-Money Laundering Law, 8 Amending For The Purpose Sections 10 And 11 Of Republic Act No. 9160, Otherwise Known As The Anti-Money Laundering Act Of 2001, As Amended, And For Other Purposes
- E-Commerce Law-R.A. 8792
- Consolidated and Revised Guidelines To Implement The Expanded Coverage Of Court-Annexed Mediation (Cam) And Judicial Dispute Resolution (JDR)

Goal 3: Improved Integrity, Accountability and Efficiency of the Philippine Judiciary, Prosecutors and Public Attorneys

Results 3.1: Enhanced self-policing of justices and judges and court personnel of the Philippine Judiciary

After over a year of conducting the Integrity Development Review (IDR) among all trial and appellate courts nationwide, the judiciary-wide IDP was completed and presented to the Supreme Court for consideration. The proposed IDP includes a whistleblower policy and improves reporting mechanisms, strengthens investigations, and streamlines the presentation of findings. The IDP

included the creation of a core group of attorneys and support staff within the judiciary dedicated to answering and investigating whistleblower complaints, a policy strongly supported by ABA ROLI.

On March 2010, the Supreme Court launched the Strengthening the Integrity of the Judiciary (SIJ) program in the appellate courts. The goal of the SIJ program is to reform judicial administration to promote accountability of senior and clerical officials and discourage unethical behavior by court personnel. This marks the first internal study of the appellate court to identify administrative and adjudicative functions vulnerable to corruption. The workshops culled valuable input from personnel at many different levels by encouraging frank communication about highly sensitive subjects such as recruitment and human resources policies. Over the past year, 375 court officials and judges from across the country attended SIJ workshops at the trial court level, with strong support from ABA ROLI and USAID.

Overall Results:

Objective 3.1 (a): Implementation of priority integrity reform measures identified under the Strengthening the Integrity of the Judiciary Program

3.1.1 Priority integrity reform policy recommended and submitted to the Supreme Court

Priority reform measures included in the IDP recommended by ABA ROLI were: (a) implementing the whistleblower policy pending before the Rules Committee, notwithstanding any hesitancy on their part about other aspects of the IDP;(b) creating an OCA help desk unit; and (c) creating a core group of lawyers in OCA's Legal Office dedicated to investigate judicial complaints. As of the time of this writing, both the whistleblower policy and procedures therein have not yet been acted on by the Supreme Court.

Individually, key justice officials express skepticism about the complexity of Justice Brion's modified integrity plan, but since he chairs the Integrity Committee of the Supreme Court, it is difficult to predict how the decision will proceed. Additionally, ABA ROLI is not able to make progress on finalizing and printing the human resource and procurement manuals for the judiciary, but is closely working with judicial counterparts to stay abreast of the situation and to prepare to move forward upon the completion of the manuals. This is due to the inability of the Supreme Court to make critical policy decisions necessary to complete the creation of the manual. ABA ROLI has met with key justice officials to discuss various models, but to date, movement on this issue has been delayed.

Results Statement 3.2: Increased professional Capacity of Indigent Attorney Services through the Creation and use of an Annotated Manual on Professional Conduct and Operations for the Public Attorney's Office (PAO)

The Component is geared towards improving the level of ethical and professional standards of public attorneys through the development of an integrated code of conduct and manual of operations and through trainings that ensure public attorneys appreciate the code. Specifically, it has produced the following outputs:

- Development, printing, and distribution of 2,000 copies of the Annotated Manual
- Public Launching of the Manual
- Training on Manual for Public Attorneys (possible integration of the training in their overall training and professional development program)

Objective 3.2: Improved level of ethical and professional standards of public attorneys

3.2.1 Improve tools of PAO in reviewing and enforcing administrative disciplinary measures for misconduct and unethical behavior among its ranks

Prior to the Project, a review of conduct and behavior of public attorneys under PAO is based on the Code of Professional Responsibility and Civil Service Commission issuances relevant to all lawyers in government. The need for a code specifically for PAO lawyers is based on an appreciation of their unique role as the main office providing public legal assistance for marginalized and underprivileged litigants in the country. Improving the standards that measure their conduct and behavior means ensuring indigent litigants are granted increased access to justice.

PAO currently uses the Code as its basis for processing complaints against public attorneys, thereby improving its capacity to ensure the public of agencies reliability, integrity and ability to police its ranks.

Key characteristics of the Code attributable to the increase of PAO's capacity to ensure ethical behavior and proper conduct include the following:

1. Improved clarity of the office's mission, vision and values; prohibited acts; role and responsibility of public attorneys; rules on tardiness and absenteeism; and applicable sanction/s.
2. Integrated pertinent rules, guidelines and procedures stipulated under the former Code of Conduct, PAO Operations Manual and PAO's legal forms. This thereby allows the PAO to refer to a standard document for reviewing complaints against public attorneys.

Results Statement 3.3: Increased professionalism of prosecutors of the Department of Justice (DOJ) through the creation and use of an Annotated Code of Conduct

The Component sought to improve the level of ethical and professional standards of public attorneys through the development of a code of conduct for prosecutors and subsequently holding trainings on the code.

Overall Results:

Objective 3.3: Improve level of ethical and professional standards of prosecutors

3.3.1 Improved institutional capacity to monitor and enforce administrative disciplinary measures for misconduct and unethical behavior among its ranks

The Code of Conduct for Prosecutors is the first attempt of the Department of Justice to clearly state and install institutional mechanisms to improve how it handles administrative complaints against prosecutors. It discusses fundamental institutional components that will guide the intake, investigation, evaluation and assignment of corresponding sanctions for administrative offenses of prosecutors. Prior to the Code, the DOJ merely relied on the Code of Professional Responsibility and the Civil Service Commission's Issuance relevant to all public attorneys in government. The Code was essential in setting out specific standards that relate to the role of prosecutors under the DOJ as the primary prosecuting arm in the country.

The Code stipulates and thereby clarifies the following standards in the conduct of prosecutor functions:

1. The credo all prosecutors adhere to
2. Core values that should characterize all prosecutors
3. The rationale, purpose and role of prosecutors
4. Responsibilities of prosecutors to their litigants, and to society in general
5. Prohibited acts and standards of conduct
6. Sanctions per offence
7. Creation of an Internal Affairs Unit under the DOJ

The DOJ has created the IAU pursuant to the Code of Conduct provision and bases all its administrative action on complaints filed against prosecutors.

The IAU is organized to investigate and prosecute violations of the Prosecutor's Code of Conduct. The Code of Conduct outlines DOJ's ethical guidelines regarding performance of duties, and defines fraudulent, corrupt and unethical behavior. Procedural guidelines that operationalize the IAU are contained in Sec. III of the Code of Conduct.

The objective of ABA ROLI's assistance was to strengthen IAU capacities in the areas of intake, investigation and prosecution. ABA documented current practices, reviewed established rules and guidelines, and developed an implementation plan that includes detailed descriptions of processes for the IAU.

ABA ROLI collaborated with Ms. Jing Vistro, a systems and processes expert to integrate formal and informal procedures into a process and implementation plan. A survey was conducted in all regional IAUs and IAU members in Regions III, VII, XI and IAU-OSEC (central IAU) were interviewed. The implementation concerns documented in the process include:

1. Not all IAUs have started implementation since the approval and operationalization of the Code of Conduct. Thus, each regional IAU are in varied stages of implementation.
2. There is no standardized processes among regional IAUs.
3. The guidelines lack clarity in certain aspects of work
4. Resource constraints, including the lack of designated staff, private and secure office space, and investigation support for IAU operations.

The draft report was submitted on October 2012. The report outlined the following: (1) a definition of activities involved from receipt to resolution; (2) identification of responsibilities and tasks of IAU chairpersons, members and administrative staff; (3) forms and templates for documentation and monitoring; and (4) action memos as part of their standard forms. The report also includes supplementary policies clarifying existing guidelines under the Code of Conduct. ABA ROLI is awaiting DOJ's final approval for the use of the handbook and relevant tools under the project.

ABA ROLI and DOJ conducted orientation activities on August 2012 in Cebu and September 2012 in Manila for all IAU members. The purpose of the seminar was to standardize the application of current procedures and familiarize IAU members with additional policies and procedures that will aid in the administration of their duties. Attendees were given an opportunity to share "best practices" and provide valuable feedback that will be used for future improvements to the program.

3.3.2 Improved understanding of IAU members of operating procedures

A diagnostic exam was provided before and after each training. The exam was drawn to measure IAU member's awareness of existing policies and procedures objectively. The tests show relative increase in knowledge of participants from an average grade 56-63% at the start of the training to 77% at the end of the training.

In a survey conducted to assess perception on the achievement of training objectives, 89% of the participants report that the training adequately equipped IAU members with sufficient understanding on standard operating procedures for IAUs.

IAU members were also polled about potential knowledge building where procedures are unclear. These potential areas now form part of solutions introduced under the implementation plan and detailed process descriptions drafted for DOJ approval.

3.3.3 Increased efficiency in handling administrative cases

The draft IAU policy clarifies specific aspects of operation otherwise lacking under the guidelines for IAU implementation. IAU members reported the need to clarify certain aspects of their operations. These issues were assessed and specific guidelines were drawn through participatory processes with IAU members and DOJ counterparts. Table 14 illustrates how the policy incorporates features that address identified issues by IAU members:

Table 11: Items Clarified Under the Draft IAU Policy for Handling Administrative Cases

ISSUES IDENTIFIED ON CURRENT GUIDELINES	CLARIFIED ITEMS UNDER THE DRAFT IAU POLICY FOR HANDLING ADMINISTRATIVE CASES
RECEIVING	
1. Processing a complaint that is both criminal and administrative in nature	<ul style="list-style-type: none"> IAU to process administrative complaints ONLY, and advise complainants on where to file corresponding criminal case if complainant so desires. If the case involves sexual harassment, the complaint shall be directed to the DOJ central or regional committee on Decorum and Investigation (CODI) for handling. (Item A.1.)
2. Which IAU to handle complaints filed against IAU members (i.e. IAU-ORP, IAU-PG, IAU-OSEC)	<ul style="list-style-type: none"> Case against IAU –ORP members to be filed with the same IAU-ORP Case against NCR-ORP members should be filed with IAU-OPG Cases against IAU- OPG member should be filed with IAU-OSG Cases against IAU-OPG support staff should be filed with IAU-OPG (Item A.4.)
3. How to proceed with a complaint being filed with an IAU that does not have jurisdiction over such complaint	<ul style="list-style-type: none"> IAU office receiving the file will direct the complainant to the IAU with jurisdiction over the case. If complainant is restrained from filing the case to the IAU with jurisdiction over the case due to proximity of the IAU office, the IAU office should receive the complaint and endorse the complaint to the proper IAU office. (Item A.5)
4. Number of copies of complaints and support documents to be required with an IAU that does not have jurisdiction over such complaint	<ul style="list-style-type: none"> IAU office will receive the file initially and then endorse the file to the proper IAU office (item A.5) for proper processing
5. What to do with submission which are non-compliant with filing requirements	<ul style="list-style-type: none"> Non-compliant submissions should not be received. If filed by mail, a letter requesting for compliance shall be written to the Complainant. The file shall not be docketed until the complaint is complete. (Item A.12)
6. How to specifically process anonymous complaints	<ul style="list-style-type: none"> Filing of anonymous complaints shall be recorded under the head of office for cases filed against prosecutors and administrative officers of the office, and admin officer of the office if against support staff. (Item A.13)
ASSIGNMENT	
7. Reasonable basis for assigning complaints to IAU members for evaluation and resolution	<ul style="list-style-type: none"> To be assigned based on raffling (item B.2)
8. How to proceed in case of inhibition of the IAU chairperson and/or IAU members	<ul style="list-style-type: none"> The complaint shall be assigned to the IAU member who is next in the number series attributed to the IAU member. The skipped IAU member, shall, in turn, be the first priority in assigning the next complaint In the case where IAU Chairperson and/or all members of the IAU inhibit, the Regional Prosecutor or the Prosecutor General, as the case may be, shall be given a blanket authority by the Secretary of Justice to designate the personnel serving as the IAU Chairperson and/or member with respect to the particular complaint to which the inhibition referred to (Item B. 2, B.3)
9. Grounds for the inhibition of IAU chairperson and/or IAU members	<ul style="list-style-type: none"> Same grounds for inhibition in a preliminary conference (Item B.4,
10. Time required to assign received complaints to IAU members for evaluation	<ul style="list-style-type: none"> Within 2 business days from date of receipt (Item B.5)
EVALUATION	
11. When to consider a complaint as not actionable	<ul style="list-style-type: none"> When case is anonymous such that the guilt of the respondent is difficult to establish; the complaint is not administrative in nature such that it falls outside the jurisdiction of the IAU handling the case; the complaint is to be governed by an IAU other than the initially receiving IAU, etc. (Item C.6)
INVESTIGATION	
12. Extent of performance of investigative work with respect to anonymous complaints	(No distinction indicated)
13. Guidance on designating the venue of preliminary conference	<ul style="list-style-type: none"> Shall be held in the office of the assigned IAU member, or in a place deemed appropriate by the assigned IAU member (Item D.3)

ISSUES IDENTIFIED ON CURRENT GUIDELINES	CLARIFIED ITEMS UNDER THE DRAFT IAU POLICY FOR HANDLING ADMINISTRATIVE CASES
14. Documents to be required of the parties to the case in a preliminary investigation	<ul style="list-style-type: none"> The respondent shall be given 10 days from receipt of notice to submit his/her answer under oath, with supporting sworn statements and documents A reply-affidavit and a rejoinder shall not be required for submission by the parties to the case (Item D.4)
15. How to docket a formal charge	<ul style="list-style-type: none"> A docket number shall be assigned to a complaint after a formal charge has been approved by the Secretary. (Item D.8)
16. How to proceed when the respondent resign prior to filing of formal charge	<ul style="list-style-type: none"> Administrative case against her shall automatically be dismissed (Item D.9)
17. How to proceed when the respondent resigns after the filing of formal charge	<ul style="list-style-type: none"> The gravity of the offense shall first be determined as a basis, in turn, for the determination of a complaint's dismissal. If the formal administrative charge carries the penalty of dismissal or those with accessory penalty of forfeiture of benefits and disqualification to hold public office, the charge shall be sustained and administrative proceedings shall continue withstanding the resignation. However, if the offense is for a lesser penalty, the charge shall be dismissed. (Item D.10)
18. How to designate the hearing officer in a formal administrative hearing	<ul style="list-style-type: none"> Shall be designated by the IAU Chairperson from among the IAU members other than the member who conducted the preliminary investigation (Item D. 12)
19. How to designate the prosecuting officer in a formal administrative hearing	<ul style="list-style-type: none"> Regional Prosecutor designates prosecutor of a region if respondent is support staff or prosecutor of the region Prosecutor General designates DOJ or NCR prosecutor if respondent is support staff or prosecutor of NCR, and support staff of the prosecutor general. An Undersecretary designates regional prosecutor, provincial prosecutor or city prosecutor if respondent is head of office Undersecretary in-charge of IAU-OSEC designates senior deputy prosecutor, regional prosecutor, deputy regional prosecutor, provincial or city prosecutor if respondent is prosecutor in OPG, city prosecutor of NCR, IAU chairperson, regional prosecutor, prosecutor general. (Item D. 12)
RESOLUTION	
20. How to proceed when there are irreconcilable disagreements on the resolution of a complaint	<ul style="list-style-type: none"> The higher authority shall prepare or cause the preparation of a review resolution and accomplish accordingly the pertinent section of the Preliminary Investigation Report or the Formal Investigation Report. (Item E.5)
RECONSIDERATION	
21. How to determine the office responsible for resolving motions for reconsideration	<ul style="list-style-type: none"> Shall be resolved by the office promulgating the decision
OTHER ISSUES	
22. How to proceed when the complainant withdraws the complaint	<ul style="list-style-type: none"> Dismiss the complaint if involving light offense, and there is a compromise agreement constituting the decision and signifying an amicable settlement between the parties as allowed by the Revised Rules on Administrative cases in Civil Service Sustain the complaint and continue with admin. Proceedings, if grave offense and with merit, proceeding in the same manner as that prescribed for filing anonymous complaint per Receiving Policy 13. (Item D.11)

The draft policies essentially streamlined and standardized procedures for IAU offices that otherwise vary in implementation of the guidelines set under the Code of Conduct. The policy puts together the consensus built among IAU members during validation meetings and trainings on how to handle administrative complaints against prosecutors and support staff of the National Prosecution Service of the DOJ. Processes of IAU will now include:

1. Standard recording of case information at the start to the end of the project
2. Uniform receiving, assignment, evaluation and investigation process
3. Specified requirements for filings of parties
4. Standard response to non-compliance and lack of information
5. Standard report requirements on cases, case status and case assignments

Result 3.4: Provide technical assistance to DOJ in creation of new Office for Competition (OFC) to improve business environment

DOJ's Office for Competition (OFC), created in 2011, is tasked with investigating and enforcing competition laws. This program component sought to ensure that OFC is adequately organized and trained to investigate and prosecute anti-competitive conduct, and to execute impending legislation designed to modernize the Philippines' antitrust laws.

ABA ROLI facilitated a legal gap analysis of the existing laws and procedures relating to competition enforcement, helping to develop an organizational structure for OFC, and helping to develop proposed guidelines for enforcing existing competition laws. In February 2012, ABA ROLI's international consultant, Carolyn Galbreath worked with OFC on a needs assessment and a strategic plan. Ms. Galbreath was chosen because of her unique combination of experience, including enforcement work for the U.S. DOJ's Antitrust Division; work as a European regulator (specifically, with the Irish Competition Authority's cartels enforcement section); and technical assistance to antitrust/competition authorities in developing countries. Throughout February 2012, Ms. Galbreath met with staff members of OFC and other government agencies. Her "Assessment Needs and Strategic Planning Report" was submitted to OFC on February 21, 2012. Her report identifies six key priorities for OFC over the next twelve to eighteen months:

- 1) Obtain technical competition law expertise to draft comprehensive competition legislation.
- 2) Complete a comprehensive review and analysis of the laws and regulations related to Philippine competition law and policy.
- 3) Study the functional operations of competition agencies in other jurisdictions to better understand the requirements for a fully functioning competition agency.
- 4) Enter into cooperation agreements and execute necessary terms of reference to establish two inter-agency advisory Working Groups on 1) Advocacy and Partnerships and 2) Consumer Protection and Welfare in collaboration with the Department of Trade and Industry (DTI) and the Tariff Commission.
- 5) Begin raising public awareness about the benefits of competition.
- 6) Consider creating an omnibus cooperation protocol with the forty-five sector regulators that will establish clear rules for notification, information sharing and referrals of complaints between them.

In April 2012, ABA ROLI attended a meeting held by OFC with development partners including the Japanese International Cooperative Agency, the World Bank, and the EU Trade Related Technical Assistance Program. Assistant Secretary of Justice Geronimo Sy presented a round-up of on-going activities. He mentioned that there had been no significant progress on passage of the Competition Bill due to the on-going impeachment proceedings at the Senate. He also identified three key priorities for the ensuing twelve months:

- (1) Setting up the Working Groups and adoption of their Terms of Reference;
- (2) Formalizing a cooperation framework between the OFC and Regulators; and

(3) Conducting a competition study.

ABA ROLI was asked to conduct background research to assist with these priorities. During the reporting period, ABA ROLI provided the following research notes to the OFC:

(1) A template document setting out the suggested content for the Terms of Reference of the Working Groups.

(2) A research note on South African competition law explaining its model of enforcement, specifically the separation of investigative and adjudicative functions between a Competition Commission (which investigates competition law infringements) and a Competition Tribunal (which imposes penalties for such infringements).

OFC informed ABA ROLI that the Office had finalized its Action Plan and Case Intake Procedures. But neither of these documents was shared with ABA ROLI, as Assistant Secretary Systated he preferred to keep these confidential at this stage.

Assistant Secretary Syalso stated that he had instructed his staff to begin work on the OFC's Implementing Rules and Regulations. ABA ROLI offered to assist by convening a panel of pro bono competition/antitrust lawyers to advise on OFC guidelines. Assistant Secretary Sydeclined this assistance.

ABA ROLI reiterated its offer to provide commentary on draft competition bills if requested by the Office. So far, Assistant Secretary Sy has not responded to this offer.

In June 2012, ABA ROLI's Senior Rule of Law Advisor was invited to serve as resource speaker for a Media Forum on Competition Policy held by OFC in collaboration with the EU Trade Related Technical Assistance Program. The presentation included a brief historical overview of antitrust and competition law and a review of case studies. The participants included members of the local media and officials from government information agencies.

Other Activities

On January 19, 2012 the Japanese International Cooperation Agency (JICA) and OFC held a competition seminar for regulatory agencies. ABA ROLI Senior Rule of Law Advisor Anthony Valcke made a presentation on the different approaches to competition regulation in the United States, the European Union and other jurisdictions. Each agency then outlined its regulatory role.

In the last week of February, the EU Trade Related Technical Assistance program and the Office held a week-long training workshop on cartels detection and investigation for regulatory agencies. Anthony Valcke made presentations on the economics of cartels and a comparison of the UK and Australian models of cooperation between regulators and competition authorities.

List of Annexes

- Annex A – FRIA MANUAL, A Guide to the Provisions of Republic Act No. 10142 (An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals)
- Annex B – Final Draft of Sentencing Guidelines
- Annex C – Organizational Development Interventions in the Department of Justice (DOJ) Internal Affairs Unit (IAU) Operations
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ANNEX A

FINAL DRAFT SUBMITTED
FOR THE APPROVAL OF THE PHILJA

FRIA MANUAL

A guide to the Provisions of Republic Act No. 10142
(An Act Providing for the Rehabilitation or Liquidation
of Financially Distressed Enterprises and Individuals)

Prepared by

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Disclaimer

Preparation of this Manual was commissioned prior to the release by the Supreme Court of the Rules of Procedure governing FRIA and was solely based on the provisions of FRIA alone. Except for the section on jurisprudence, the contents of the Manual do not reflect the Supreme Court's view on any particular provision of the law.

PROFILE OF THE AUTHOR

Maria Rowena Modesto-San Pedro attended Assumption Convent for Grade School and High School. She graduated Cum Laude with a degree of BA Communications from the College of Mass Communications, University of the Philippines and belonged to the Top 20 of her batch in the UP College of Law. She ranked No. 1 in the Pre-Judicature Program given by the Philippine Judicial Academy and is now a Professorial Lecturer of the Academy, currently serving as Resource Person in the ongoing training for Special Commercial Court Judges throughout the country. In 2010, she was admitted as a Fellow of the Commonwealth Judicial Education Institute in Canada, on a grant given by the Canadian International Development Agency. She recently sat as member of the Sub-Committee on the Rules of Procedure for Intellectual Property Rights Cases.

She has served at all four levels of the judiciary, previously working as Court Attorney in both the Court of Appeals and the Supreme Court. She was a Metropolitan Trial Court Judge in Pasig City for 3 and ½ years and is now the Presiding Judge of an unusual mix of Commercial Court and Family Court in Pasig City. She was recently honored by the Supreme Court, in cooperation with the Society for Judicial Excellence, as a Judicial Excellence Awardee and one of three outstanding Judges for the year 2011.

She married a classmate who is now a Professor at the UP College of Law and Senior Partner at CVC Law and they have 2 College boys.

The author wishes to thank the following:

The Philippine Judicial Academy, especially Justice Delilah Vidallon-Magtolis and Joan Marie C. Tejada, for their continued trust in me.

ABA-ROLI, especially Atty. Kristina Manalang-De Guzman, for providing me with the opportunity to be of service to the judiciary, particularly Special Commercial Courts.

My staff at the Pasig City Regional Trial Court, Branch 158, especially Atty. Romeo Bautista IV, for their invaluable assistance and appreciated company.

My sons, for keeping me in check, in both work and play.

And my husband, for knowing all the answers to my questions and indulging my passion for law, among others.

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2012

San Jose Timber, et al. v. SEC
BPI v. Hong, et al.
Advent Capital and Finance Corporation v. Alcantara

2011

Siochi Fishery Enterprises, Inc., et al. v. Bank of the Philippine Islands
Molina v. Pacific Plans, Inc., G.R. No. 165476, 15 August 2011
Advent Capital and Finance Corporation v. Young
BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.
Umale v. ASB Realty Corporation
Majority Stockholders of Ruby Industrial Corporation v. Lim
JAPRL Development Corp., et al. v. Security Bank Corporation
Asiitrust Development Bank v. First Aikka Development, Inc., et al.
Samuel U. Lee, et al. vs. Bangkok Bank Public Company, Limited
Jose Marcel Panlilio, et al. vs. Regional Trial Court, et al.

2010

De Castro v. Liberty Broadcasting Network, Inc. and Edgardo Quiogue
China Banking Corporation v. Cebu Printing and Packaging Corporation
Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation
North Bulacan Corporation v. Philippine Bank of Communications
Castillo v. Uniwide Warehouse Club, Inc./or Jimmy Gow

2009

Tiango and Manego v. Uniwide Sales Warehouse Club, Inc.
and Jimmy Gow
Pacific Wide Realty and Development Corporation v.
Puerto Azul Land, Inc.
Abrera, et al. v. Barza
Malayan Insurance Company, Inc. v. Victorias Milling Company, Inc.
Philippine National Bank and Equitable PCI Bank v.
Court of Appeals, et al.
Philippine Airlines, Inc. v. Court of Appeals and Sabine Koschinger

2008

China Banking Corporation v. ASB Realty Corp., et al.
Negros Navigation v. Court of Appeals, et al.
Rosario v. Co
Union Bank v. ASB Dev. Corp.
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BPI v. SEC

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2005

Sobrejuanite v. ASB Dev. Corp.

Ong v. PCIB

2004

MWSS v. Daway

2003

Chas Realty v. Talavera

2001

Veteran's Bank Employees Union v. Vega

FRIA – Republic Act No. 10142

An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals

It is stated in the FRIA that the declared policy of the State is to encourage debtors and their creditors to collectively and realistically resolve and adjust competing claims and property rights.

Rehabilitation and liquidation of debtors must, thus, be timely, fair, transparent, effective and efficient.

The goals of rehabilitation and liquidation were set out to be as follows:

- ensure or maintain certainty and predictability in commercial affairs
- preserve and maximize the value of the assets of debtors
- recognize creditor rights
- respect priority of claims
- ensure equitable treatment of creditors who are similarly situated

Source – Section 2

It used to be that when Petitions for rehabilitation were denied due course or dismissed, no further proceedings were ordered and creditors were simply given the freedom to enforce their rights and collect the debts due them. With the new FRIA provisions, when rehabilitation is not feasible, the proceedings can now be converted into one for liquidation.

Source – Sections 25, 67, 72, 74 and 80

The Concept of Rehabilitation

As defined, rehabilitation refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the debtor continues as a going concern than if it is immediately liquidated.

Source – Section 4

The bottom line, therefore, is better recovery by creditors of the debts owed them made possible through a Rehabilitation Plan implemented while the debtor continues its existence rather than if it is liquidated.

The ultimate goal is really for all debts of the debtor to be paid within a specific time frame.

In the meantime, the debtor is also able to get back on its feet and successfully operate its business while having a respite from having to meet simultaneous and unorganized demands of its creditors.

What it is not

Rehabilitation does not involve intrusion into the management or operations of the debtor. Indeed, *Section 47* categorically provides that management of the juridical debtor shall remain with existing management.

For as long as the debtor meets its payments and can continue to so meet its payments under the Payment Scheme contained in the Rehabilitation Plan, neither the creditors nor the Courts have any business interfering with management decisions of the debtor.

An exception to this is found in *Section 36* when management may be displaced by the Rehabilitation Receiver or a Management Committee.

Nature of Proceedings

Rehabilitation proceedings continue to be in rem, with jurisdiction acquired upon publication of the Commencement Order.

Proceedings also retain a summary and non-adversarial character. The summary nature of the proceedings calls for strict observance of the deadlines set under the law. Witnesses are not presented in the same manner as they would be presented during regular trial. Instead, it is the Court which asks questions to representatives of the debtor to clarify points relevant to the approval of the Rehabilitation Plan. Creditors may submit questions to the Court, but these would be posed by the Court.

Types of Rehabilitation

Under the FRIA, there are three (3) means by which to undergo rehabilitation. The first is the Court Supervised Rehabilitation where either the debtor or creditor(s) files a Petition with the Court for rehabilitation of the debtor. The second is the Pre-Negotiated Rehabilitation where the debtor alone or with creditor(s) files for approval of a Pre-Negotiated Rehabilitation Plan. These first two types are filed with the Courts, with the Court Supervised Rehabilitation necessitating more involvement from the Court. The final type of rehabilitation is the Out of Court or Informal Restructuring Agreement or Rehabilitation Plan, which does not involve the Courts.

COURT SUPERVISED REHABILITATION

What to check in the Petition

1. Who is filing?

Petitions for Rehabilitation can be filed either by

- a. debtor voluntarily – the debtor can be a sole proprietorship, partnership or corporation; or
- b. creditor or group of creditors

Source – Sections 12, 13 and 14

2. If filed by a debtor, has the required approval for the filing debtor been obtained?

- a. For sole proprietorship – owner
- b. For partnership – majority of partners
- c. For corporation - majority vote of Board Of Directors or Trustees and authorized by 2/3 vote of Outstanding Capital Stock or Members in a Stockholders/Members' meeting duly called for that purpose

Source – Section 12

3. If jointly filed by a group of debtors, are the following circumstances met?

- a. One (1) or more of its members foresee the impossibility of meeting debts when they fall due; and
- b. the financial distress would likely adversely affect the financial condition and/or operations of other members of the group; and/or
- c. participation of other members of the group is essential under the Rehabilitation Plan

Source – Section 12

4. If filed by a creditor or group of creditors, is the required amount of claim met?

- Claim of or aggregate of claims must be at least One Million Pesos (P1,000,000.00) or at least twenty five percent (25%) of the subscribed capital stock or partners' contributions, whichever is higher

Source – Section 13

5. If filed by a creditor or group of creditors, are the following circumstances met?

- a. there is no genuine issue of facts or law on the claim(s) of the petitioner(s) and the due and demandable payments thereon have not been made for at least sixty (60) days or that the debtor has failed generally to meet its liabilities as they fall due; or
- b. a creditor, other than petitioner(s), has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts when they fall due or will render it insolvent

Source – Section 13

6. Is the debtor not excluded from the provisions of the FRIA?

The following are excluded from FRIA

- a. Banks – jurisdiction with Banco Sentral ng Pilipinas;
- b. Insurance Companies – jurisdiction with Insurance Commission;
- c. Pre-Need Companies – jurisdiction with Insurance Commission;
- d. National or Local Government Units

Note that Government Owned and Controlled Corporations and Government Financial Institutions other than banks are covered by the FRIA unless their specific charter provides otherwise

Source – Section 5

7. Does the Petition contain the following requirements?

- a. Verification – to establish insolvency of the debtor and viability of rehabilitation; and
- b. Attachments (as enumerated hereinafter)

Source – Sections 12 and 14

8. Are the following required Attachments or Inclusions in a Debtor-Filed Petition complete?

- a. Identification of debtor, its principal activities and its addresses;
- b. Statement of fact of and cause of debtor's insolvency or inability to pay its obligations as they become due;
- c. Specific relief sought pursuant to FRIA;
- d. Grounds upon which the Petition is based;
- e. Other information that may be required under FRIA depending on the form of relief requested;
- f. Schedule of debtor's debts and liabilities including a list of creditors with their addresses, accounts of claims and collaterals, or securities, if any;
- g. Inventory of all its assets including receivables and claims against third parties;
- h. A Rehabilitation Plan;
- i. The names of at least three (3) nominees to the position of Rehabilitation Receiver; and

- j. Other documents required to be filed with the Petition pursuant to FRIA and Rules of Procedure

Source – Section 12

9. Are the following Attachments or Inclusions in a Creditor-Filed Petition complete?

- a. Identification of debtor, its principal activities and its addresses;
- b. Circumstances sufficient to support a Petition to initiate involuntary rehabilitation proceedings;
- c. Specific relief sought pursuant to FRIA;
- d. A Rehabilitation Plan;
- e. The names of at least three (3) nominees to the position of Rehabilitation Receiver;
- f. Other information that may be required under FRIA depending on the form of relief requested; and
- g. Other documents required to be filed with the Petition pursuant to FRIA and Rules of Procedure

Source – Section 14

What are the two(2) Alternative Courses of Action to Take Upon Receipt of a Petition for Rehabilitation?

1. Issue a Corrective Order; or
2. Issue a Commencement Order

Source – Section 15

When is a Corrective Order Issued?

- A Corrective Order is issued if the Court finds the Petition deficient in form and substance

Source – Section 15

What is the Time Period for Issuing a Corrective Order?

- The Corrective Order must be issued within five (5) working days from filing of the Petition

Source – Section 15

What Should the Corrective Order Direct the Petition to do?

1. Amend or supplement the Petition; and/or
2. Submit such documents as may be necessary or proper to put the Petition in proper order

Source – Section 15

When is a Commencement Order Issued?

- A Commencement Order is issued if the Court finds the Petition sufficient in form and substance
Source – Section 15

What is the Time Period for Issuing a Commencement Order?

- The Commencement Order must be issued within five (5) working days from filing of the Petition
- Note that the time period is adjusted when a Corrective Order has been previously issued; in which case, the Commencement Order must be issued within five (5) working days reckoned from the date of filing of the amended or supplemented Petition or from the submission of such documents found necessary or proper to put the Petition in proper order
Source – Section 15

What is the Importance of the Commencement Order?

- As its name suggests, rehabilitation proceedings commence upon the issuance of the Commencement Order
Source – Section 16

What must the Commencement Order accomplish?

1. Identify the debtor, its principal business or activity(ies) and its principal place of business;
2. Summarize the grounds for initiating the proceedings;
3. State the relief sought under FRIA and any requirement or procedure particular to the relief sought;
4. State the legal effects of the Commencement Order, including those mentioned in Section 17;
5. Declare that the debtor is under rehabilitation;
6. Direct publication of the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first (1st) publication to be made within seven (7) days from time of its issuance;
7. If petitioner is the debtor – direct service by personal delivery of a copy of the Petition on each creditor holding at least ten percent (10%) of the total liabilities of the debtor as determined from the schedule attached to the Petition, within five (5) days;
If petitioner is a creditor – direct service by personal delivery of a copy of the Petition on the debtor, within five (5) days;
8. Appoint a Rehabilitation Receiver who may or may not be among the nominees of the petitioner;

9. Summarize the requirements and deadlines for creditors to establish their claims against the debtor and direct all creditors to file their claims with the Court at least five (5) days before the initial hearing;
10. Direct the Bureau of Internal Revenue (BIR) to file and serve on the debtor its Comment/Opposition to the Petition or its claims against the debtor;
11. Prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after issuance of the Commencement Order;
12. Authorize payment of administrative expenses as they become due;
13. Set the case for Initial Hearing – which should not be more than forty (40) days from date of filing of the Petition, for the purpose of determining whether there is a substantial likelihood for the debtor to be rehabilitated;
14. Make available copies of the Petition and Rehabilitation Plan for examination and copying by any interested party;
15. Indicate the location or locations at which documents regarding the debtor and the proceedings may be reviewed and copied;
16. State that any creditor or debtor who is not the petitioner may submit the name or nominate any other qualified person to the position of Rehabilitation Receiver at least five (5) days before the Initial Hearing;
17. Include a Stay or Suspension Order which shall
 - (1) Suspend all actions or proceedings in Court or otherwise for enforcement of claims against the debtor;
 - (2) Suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - (3) Prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - (4) Prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may provided in the FRIA

Source – Section 16

Note – With the appointment of a Rehabilitation Receiver, his/her acceptance, oath, bond and compensation must also be addressed. A paragraph in the Commencement Order may be included as follows –

“Atty. _____ is hereby appointed as Rehabilitation Receiver. The petitioner is hereby directed to immediately serve a copy of the Commencement Order upon the Rehabilitation Receiver who is to manifest his acceptance or non-acceptance of the appointment not later than ten (10) days from receipt of this Commencement Order. He may then assume the position upon taking an Oath before this Court and after posting a bond in the amount of _____ Pesos (_____) in

favor of petitioner _____ Corporation to guarantee that he will perform his duties and functions faithfully and obey the Orders of this Court. Upon assumption of powers and functions, he must submit to the Court an estimate of his fees and reasonable professional and reimbursement expenses for approval by the Court as part of administrative expenses. The fees, chargeable to the petitioner, are ideally agreed upon by the parties and the Rehabilitation Receiver. In the absence of such an agreement, the Court shall decide after notice and hearing.”

What are the requirements for Publication of the Commencement Order?

1. The first (1st) publication must be made within seven (7) days from issuance of the Commencement Order;
2. The publication must be in a newspaper of general circulation in the Philippines; and
3. The publication must be made at least once a week for at least two (2) consecutive weeks

Source – Section 16

Matters Involving the Rehabilitation Receiver

1. Rehabilitation Receiver must file a Performance Bond (in amount fixed by the Court) and take his Oath prior to entering upon powers
Source – Section 34
2. Compensation
 - a. for reasonable fees and expenses
 - b. compensation terms are to be approved by the Court after notice and hearing
 - c. prior to hearing, entitled to reasonable compensation based on quantum meruit
 - d. costs are to be considered administrative expenses

Source – Section 33

3. Vacancy
 - a. Court must direct debtor and creditors to submit nominees to the position
 - b. Court may appoint any of the qualified nominees or any other person qualified for the position

Source – Section 35

What is the Registry of Claims to be established by the Rehabilitation Receiver?

- The Registry of Claims is a listing of the claims of creditors against the debtor

- All claims included in the Registry of Claims must be duly supported by sufficient evidence
 - There are two (2) kinds of Registry of Claims
 1. Preliminary Registry of Claims
 2. Registry of Claims with Undisputed Claims
- Source – Sections 44 and 45

What is the time period within which the Registry of Claims must be established by the Rehabilitation Receiver?

1. Preliminary Registry of Claims – within twenty (20) days from assumption into office
 2. Registry of Claims with Undisputed Claims – upon expiration of thirty (30) day period for filing opposition or challenge of claims
- Source – Sections 44 and 45

What are the differences between the two types of Registry of Claims?

1. The Preliminary Registry of Claims is the first listing prepared by the Rehabilitation Receiver based on the claims filed by creditors with the Court as required under the Commencement Order; while The Registry of Claims with Undisputed Claims is the second listing prepared by the Rehabilitation Receiver after he removes those claims against which opposition/challenges have been posed and which opposition/challenges he found meritorious;
 2. The Preliminary Registry of Claims is a mere listing of submitted claims; while the Registry of Claims with Undisputed Claims is already a filtered list resulting from the Rehabilitation Receiver’s ruling on challenged claims
- Source – Sections 44, 45 and 46

Note – the power of the Rehabilitation Receiver to rule on the challenged claims is presumed from Section 46, which holds that any decision of the Rehabilitation Receiver regarding a claim may be appealed to the Court

What are the duties of the Rehabilitation Receiver with respect to the Registry of Claims?

1. He must make the Preliminary Registry of Claims available for public inspection;
2. He must provide publication notice to the debtor, creditors and stakeholders on where and when they may inspect the Preliminary Registry of Claims;
3. He must provide in the notice that the debtor, creditors, stakeholders and other interested parties may submit a challenge to claim(s) to the Court, serving a certified copy on him and the creditor holding the challenged claim;
4. He must rule upon challenges to creditors’ claims;

5. He must submit a Registry of Claims with Undisputed Claims to the Court
Source – Sections 44 and 45

What is the time period for filing any Opposition or Challenge of Claims?

- Any Opposition or Challenge of Claim(s) must be filed within thirty (30) days from expiration of the twenty (20) day period to establish the Preliminary Registry of Claims

Source – Section 45

What are the compliance matters to check prior to and during the Initial Hearing?

1. Have claims of creditors been filed at least five (5) days before the Initial Hearing;
2. Has there been any submission of nominees to the position of Rehabilitation Receiver at least five (5) days before the Initial Hearing;
3. Have the publication requirements been complied with;
4. Have copies of the Petition been timely served as directed under the Commencement Order;
5. Has the Rehabilitation Receiver initially appointed by the Court in the Commencement Order taken his oath and filed his performance bond;
6. Has the compensation for the Rehabilitation Receiver been approved after notice and hearing;
7. Has the Preliminary Registry of Claims been established by the Rehabilitation Receiver;
8. Have all challenges to creditors' claims been ruled upon by the Rehabilitation Receiver;
9. Are there claims which remain disputed and if so, are there any appeals against the Rehabilitation Receiver's ruling(s) thereon;
10. Has the Rehabilitation Receiver submitted a Registry of Claims with Undisputed Claims to the Court

When should the Initial Hearing be scheduled?

- The Initial Hearing must be set not more than forty (40) days from the date of filing of the Petition
- The Initial Hearing date must be set forth in the Commencement Order

Source – Section 16

What action does the Court take during the Initial Hearing?

1. Determine the creditors who have made timely and proper filing of their notice of claims;
2. Hear and determine any objection to the qualifications of the appointed Rehabilitation Receiver and if necessary, appoint a new one;

3. Determine compliance with its directives under the Commencement Order;
4. Determine compliance with other matters enumerated above (as listed under the question “What are the compliance matters to check prior to and during the Initial Hearing?”);
5. Address the primary purpose of the Initial Hearing which is to determine whether there is a substantial likelihood for the debtor to be rehabilitated;
6. Direct the creditors to comment on the Petition and the Rehabilitation Plan and to submit such Comments to the Court and the Rehabilitation Receiver within a period of not more than twenty (20) days from the Initial Hearing date; and
7. Direct the Rehabilitation Receiver to evaluate the financial condition of the debtor and to prepare and submit to the Court, within forty (40) days from the Initial Hearing, his Report as required under Section 24

Source – Sections 16 and 22

How does the Court determine whether there is a substantial likelihood for the debtor to be rehabilitated?

1. The Court can check the following minimum requirements:
 - a. Proposed Rehabilitation Plan submitted complies with minimum contents prescribed by FRIA;
 - b. Sufficient monitoring by the Rehabilitation Receiver of the debtor’s business for the protection of the creditors;
 - c. Rehabilitation Receiver submits a report, based on the preliminary evaluation, stating that the underlying assumptions and goals stated in the Rehabilitation Plan are realistic and reasonable or if not, there is a substantial likelihood for debtor to be successfully rehabilitated because, among others
 - (1) there are sufficient assets with which to rehabilitate the debtor;
 - (2) there is sufficient cash flow to maintain the operations of the debtor;
 - (3) the debtor’s partners, stockholders, directors and officers have been acting in good faith and with due diligence;
 - (4) Petition is not a sham filing intended only to delay the enforcement of the rights of the creditors; and
 - (5) Debtor would likely be able to pursue a viable Rehabilitation Plan;
 - d. Petition, Rehabilitation Plan and attachments do not contain any materially false or misleading statement;
 - e. If petitioner is the debtor – debtor has met with creditors representing at least $\frac{3}{4}$ of total obligations to extent reasonably possible and made good faith effort to reach a consensus on proposed Rehabilitation Plan;
If petitioner is a creditor – petitioner(s) met with debtor and made good faith effort to reach a consensus on the Rehabilitation Plan; and
 - f. Debtor has not committed acts of misrepresentation or in fraud of creditors

Source – Section 21

2. The Court can ask questions to the debtor, creditors, Rehabilitation Receiver and other stakeholders during the Initial Hearing for a better understanding of the condition of the debtor, the Rehabilitation Plan itself and the objections of the creditors;
3. The following matters can be taken into consideration when studying the viability of the Rehabilitation Plan and whether or not to approve it (can be basis for Initial Hearing Questions):
 - a. Creditor support;
 - b. Financial History of the debtor;
 - c. Previous and Current Operations of the debtor; average quarterly OPEX and CAPEX
 - d. Number of employees of the debtor;
 - e. Principal Debt Amounts, penalties and interests;
 - f. Debt payment history;
 - g. Reasons why debtor is in need of rehabilitation; causes why debtor cannot meet payments when due;
 - h. Assets of debtor;
 - i. Cash Flow Projections; Amount needed for rehabilitation
 - j. Possible Investors;
 - k. Stockholders Sacrifice and Pain Sharing;
 - l. Commitments and Documentation;
 - m. Liquidation Analysis

Note – The Court can include in the Commencement Order a directive for creditors and stakeholders to file questions to be posed to the debtor by the Court during the Initial Hearing; a deadline of at least five (5) days before the Initial Hearing may be set for submission of such questions.

What should the Report of the Rehabilitation Receiver contain?

The Report should contain the preliminary findings and recommendations of the Rehabilitation Receiver on whether

1. the debtor is insolvent; and if so
 - a. causes thereof;
 - b. any unlawful or irregular act or acts committed by the owner of a sole proprietorship, partner of a partnership or director or officers of a corporation in contemplation of the insolvency of the debtor or which may have contributed to the debtor's insolvency;
2. the underlying assumptions, financial goals and procedures to accomplish such goals as stated in the Rehabilitation Plan are realistic, feasible and reasonable;
3. there is a substantial likelihood for the debtor to be successfully rehabilitated;

4. the Petition should be dismissed; and
5. the debtor should be dissolved and/or liquidated

Source – Section 24

When should the Report of the Rehabilitation Receiver be filed?

- The Report should be filed within forty (40) days from the Initial Hearing date
- The Report must be filed whether or not Comments were received from creditors

Source – Section 24

What courses of action are available to the Court after submission of the Rehabilitation Receiver's Report?

There are three (3) courses of action available to the Court:

1. Give due course to the Petition;
 2. Dismiss the Petition; or
 3. Convert the proceedings into one for liquidation of the debtor
- Action must be taken within ten (10) days from receipt of the Report of the Rehabilitation Receiver

Source – Section 25

When should the Petition be Dismissed?

The Petition should be dismissed upon a finding that

1. The debtor is not insolvent;
2. The Petition is a sham filing intended only to delay the enforcement of the rights of the creditor(s);
3. The Petition, the Rehabilitation Plan and the attachments thereto contain any materially false or misleading statements; or
4. The debtor has committed acts of misrepresentation or in fraud of its creditors(s) or a group of creditors

Source – Section 25

Aside from dismissal of the Petition, what can the Court order when it dismisses the Petition?

- Court may, in its discretion order the petitioner to pay damages to any creditor or debtor who may have been injured by the filing of the Petition, to the extent of such injury

Source – Section 27

When should the Petition be Converted into one for the Liquidation of the Debtor?

The Petition should be converted into one for the liquidation of the debtor upon a finding that

1. The debtor is insolvent; and
2. There is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the Rules to be promulgated by the Supreme Court

Source – Section 25

When should the Petition be Given Due Course?

The Petition can be given due course upon a finding that

1. the debtor is insolvent; and
2. there is a substantial likelihood for the debtor to be successfully rehabilitated

Source – Section 25

What action must the Court take if it gives Due Course to the Petition?

1. Direct the Rehabilitation Receiver to review, revise and/or recommend action on the Rehabilitation Plan and submit the same or a new one to the Court within a period of not more than ninety (90) days;
2. Court may refer any dispute relating to the Rehabilitation Plan or rehabilitation proceedings pending before it to arbitration or other modes of dispute resolution, if same will resolve dispute more quickly, fairly and efficiently than the Court

Source – Section 26

What happens after a Petition is given due course?

1. The Rehabilitation Receiver must notify creditors and stakeholders that the Rehabilitation Plan is ready for their examination;
2. The Rehabilitation Receiver must hold consultations with the debtor and all classes of creditors and may consider their views and proposals in the review, revision or preparation of the Rehabilitation Plan;
3. The creditors must be convened to vote on the approval of the Rehabilitation Plan;
4. Creditors' approval of the Rehabilitation Plan must be obtained;
5. The approved Rehabilitation Plan must be submitted by the Rehabilitation Receiver to the Court for its confirmation

Source – Sections 63, 64 and 65

How is the Creditors' Approval for the Rehabilitation Plan obtained?

1. The Rehabilitation Receiver must convene the creditors, either as a whole or per class, for purposes of voting on the Rehabilitation Plan;
2. The convening of creditors must be within twenty (20) days from notification;

3. The Rehabilitation Plan is deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the Rehabilitation Plan;
4. The Rehabilitation Plan is deemed approved by a class of creditors if members holding more than fifty percent (50%) of the total claims of said class vote in favor of it;
5. Votes of creditors must be based solely on the amount of their respective claims, based on the Registry of Claims submitted by the Rehabilitation Receiver

Source – Section 64

When can the Court confirm the Rehabilitation Plan, even if rejected by the creditors?

The Court can confirm the Rehabilitation Plan even if rejected by the creditors if ALL of the following circumstances are present:

1. The Rehabilitation Plan complies with the requirements of FRIA;
2. The Rehabilitation Receiver recommends the confirmation of the Rehabilitation Plan;
3. The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
4. The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation

Source – Section 64

What must the Court do upon receipt of the Rehabilitation Plan from the Rehabilitation Receiver for its confirmation?

The Court must send out a Notice to creditors that

1. a Rehabilitation Plan has been submitted for confirmation;
2. any creditor may obtain copies of said Rehabilitation Plan; and
3. any creditor may file an Objection thereto within twenty (20) days from receipt of the Notice

Source – Section 65

When should the Court issue such Notice?

- The Court must issue the Notice within five (5) days from receipt of the Rehabilitation Plan for confirmation

Source – Section 65

What action should the Court take after receiving Objections from creditors?

1. Court shall issue order setting time and date for hearing or hearings on the

objections

2. If Court finds merit in Objections, it shall order the Rehabilitation Receiver or other party to cure defect when feasible;
3. If Court determines that the debtor acted in bad faith, or it is not feasible to cure the defect, Court shall convert the proceedings into one for liquidation of debtor

Source – Section 67

When can the Court issue an Order Confirming the Rehabilitation Plan following the period of filing objections?

1. If there are no objections filed within the relevant period;
2. If objections are filed, but the Court
 - a. finds them lacking in merit;
 - b. determines that basis for objection has been cured; or
 - c. determines that the debtor complied with the Order to cure objections;
3. Court can confirm the Rehabilitation Plan even if there are unresolved disputes over claims if the Rehabilitation Receiver has made adequate provisions for paying such claims;
4. To avoid doubt, other contrary provisions notwithstanding – Court shall have power to approve or implement the Rehabilitation Plan despite lack of approval or objections from owners, partners or stockholders of insolvent debtor provided that the terms thereof are necessary to restore the financial well-being and viability of the insolvent debtor

Source – Section 68

What is the Maximum Period for the Court to Confirm the Rehabilitation Plan?

- The Court only has a maximum period of one (1) year from the date of filing of the Petition within which to confirm the Rehabilitation Plan
- If no Rehabilitation Plan is confirmed within one (1) year, proceedings may, upon motion or motu proprio, be converted into one for liquidation of the debtor

Source – Section 72

What must be submitted to the Court upon confirmation of the Rehabilitation Plan?

- The Rehabilitation Receiver shall provide a Final Report and Accounting to the Court upon confirmation of the Rehabilitation Plan

Source – Section 73

Should the Rehabilitation Receiver be discharged of his duties upon confirmation of the Rehabilitation Plan?

- As a general rule, Yes

- The exception is unless the Rehabilitation Plan specifically requires and describes the role of the Rehabilitation Receiver after its approval
Source – Section 73

Note – It is prudent to ensure that the Rehabilitation Plan retains the Rehabilitation Receiver throughout the period of rehabilitation of the debtor as the Rehabilitation Receiver plays a vital role during the rehabilitation proper (can monitor and check that the Rehabilitation Plan provisions are complied with and the payment schedule is met; can also provide Quarterly Reports to the Court on the same)

When can the Rehabilitation Proceedings be ordered Terminated?

- Termination of the proceedings may be ordered upon motion by any stakeholder or the Rehabilitation Receiver
- Termination of the proceedings is by Order of the Court either declaring a
 1. successful implementation of the Rehabilitation Plan; or
 2. failure of rehabilitation

Source – Section 74

When is there a Failure of Rehabilitation?

There is a failure of rehabilitation under the following cases:

1. Dismissal of the Petition by the Court;
2. Debtor fails to submit a Rehabilitation Plan;
3. Under the submitted Rehabilitation Plan, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period;
4. The Rehabilitation Plan or its amendment is approved by the Court but
 - a. in the implementation thereof, the debtor fails to perform its obligations thereunder; or
 - b. there is a failure to realize the objectives, targets or goals set forth therein, including timelines and conditions for settlement of obligations due to creditors and other claimants;
5. There is commission of fraud in securing approval of the Rehabilitation Plan or its amendments; and
6. Other analogous circumstances as may be defined by the Rules of Procedure

Source – Section 74

What can the Court do upon breach of, or failure of, the Rehabilitation Plan?

Upon motion of an affected party, the Court may:

1. Issue an Order directing that the breach be cured within a specified period of time, failing which proceedings may be converted to liquidation;
2. Issue an Order converting the proceedings to liquidation;

3. Allow the debtor or the Rehabilitation Receiver to submit amendments to the Rehabilitation Plan, approval of which shall be governed by the same requirements for approval of a Rehabilitation Plan;
4. Issue any other Order to remedy the breach, consistent with present regulation, law and best interest of creditors; or
5. Enforce applicable provisions of the Rehabilitation Plan through a writ of execution

Source – Section 74

What are the Effects of Termination of the Proceedings?

1. The Rehabilitation Receiver is discharged, subject to the submission of his Final Accounting;
2. The Stay Order and any other Court order holding in abeyance any action for enforcement of a claim against the debtor are lifted; and
3. If termination of proceedings is due to failure of rehabilitation or dismissal of Petition for reasons other than technical grounds, proceedings are immediately converted to liquidation proceedings

Source – Section 75

PRE-NEGOTIATED REHABILITATION

What to check in the Petition

1. Who is filing the Petition for approval of a Pre-Negotiated Rehabilitation Plan?

- a. Insolvent debtor by itself; or
- b. Insolvent debtor with any of its creditors

Source – Section 76

2. Does the Petition contain the following requirements?

- a. Verification; and
- b. Required creditors' endorsement or approval

Source – Section 76

3. Have the Required Creditors' Endorsement or Approval been obtained?

- a. At least 2/3 of creditors holding the total liabilities of debtor;
- b. Must include that of secured creditors holding more than 50% of total secured claims; and
- c. That of unsecured creditors holding more than 50% of total unsecured claims

Source – Section 76

4. Are the following Attachments to the Petition or Inclusions in the body of the Petition complete?

- a. Schedule of debtor's debts and liabilities;
- b. Inventory of debtor's assets;
- c. The Pre-Negotiated Rehabilitation Plan;
- d. Names of at least three (3) qualified nominees for the position of Rehabilitation Receiver; and
- e. Summary of disputed claims against the debtor and report on the provisioning of funds to account for appropriate payments should any such claims be ruled valid or their amounts adjusted

Source – Section 76

What action must the Court take upon determining that the Petition is sufficient in form and substance?

- Court must issue a Stay Order
Source – Section 77

Within what time period must such Stay Order be issued?

- Stay Order must be issued within five (5) working days from filing of the Petition

Source – Section 77

What must the Stay Order Accomplish?

1. Identify the debtor, its principal business of activity/ies and its principal place of business;
2. Declare that the debtor is under rehabilitation;
3. Summarize the grounds for the filing of the petition;
4. Direct publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from time of issuance;
5. Direct service by personal delivery of a copy of the Petition on each creditor who is not a petitioner holding at least ten percent (10%) of the total liabilities of the debtor, as determined in the schedule attached to the Petition, within three (3) days;
6. State that copies of the Petition and the Pre-Negotiated Rehabilitation Plan are available for examination and copying by any interested party;
7. State that creditors and other interested parties opposing the Petition or appointed Rehabilitation Receiver may file their Objections or Comments thereto within a period not later than twenty (20) days from second publication of the Order;
8. Appoint a Rehabilitation Receiver, if provided for under the Pre-Negotiated Rehabilitation Plan; and
9. Include a Suspension or Stay Order as described in the FRIA, which shall
 - a. Suspend all actions or proceedings in Court or otherwise for enforcement of claims against the debtor;
 - b. Suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - c. Prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - d. Prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may provided in the FRIA

Source – Section 77

Note – Considering that the Hearing on Objections should be set not earlier than twenty (20) days and not later than thirty (30) days from date of the second publication of the Stay Order, it is best to set the hearing dates on possible Objections in the Stay Order

What are the requirements for Publication of the Stay Order?

1. The first (1st) publication must be within seven (7) days from issuance of the Stay Order;
2. The publication must be in a newspaper of general circulation in the Philippines; and
3. The publication must be made at least once a week for at least two (2) consecutive weeks

Source – Section 77

What are the Requirements for Service of the Petition?

1. Copies of the Petition must be served by personal delivery;
2. Upon each creditor, who is not a petitioner, holding at least ten percent (10%) of the total liabilities of the debtor;
3. Within three (3) days

Source – Section 77

If there are no Objection(s) submitted by any Creditor or Interested Party within the allowed time period, when must the Pre-Negotiated Rehabilitation Plan be Approved?

- The Pre-Negotiated Rehabilitation Plan must be approved within ten (10) days from date of the second publication of the Stay Order

Source – Section 78

NOTE that under Sec. 77, the time period allowed for filing of objections is “not later than twenty (20) days from the second publication of this Order”; while under Sec. 79, the time period is a shorter eight (8) days. If we follow Sec. 79, the ten (10) day period is sufficient; but if we follow Sec. 77, the period is too soon as the twenty (20) day period for filing objections has not yet lapsed. We can refer to the Rules promulgated by the Supreme Court for guidance on these conflicting provisions. Meantime, it is prudent to allow the twenty (20) day period under Sec. 77 to lapse before approving the Pre-Negotiated Rehabilitation Plan so as to allow all possible Objections to be submitted to the Court.

When and Who can File Objections or Comments to the Petition and Pre-Negotiated Rehabilitation Plan?

1. Creditors and other interested parties;
2. Not later than twenty (20) days from second publication of the Stay Order

Source – Section 77

Note – As stated above, under Section 79, the time period for filing Objections is just eight (8) days from second publication of the Stay Order; please refer to Rules promulgated by the Supreme Court for guidance on these conflicting provisions. Meanwhile, it is prudent to wait for the twenty (20) day period to

lapse for the submission of Objections.

When should the Hearing on Objections be set

- The Hearing should be set not earlier than twenty (20) days and not later than thirty (30) days from date of the second publication of the Stay Order
Source – Section 80

What Courses of Action are available to the Court after the Hearing on the Objections?

1. If Court finds merit in the Objection(s) – direct debtor, when feasible, to cure the defect within a reasonable period;
2. If Court determines that debtor or creditors supporting the Pre-Negotiated Rehabilitation Plan acted in bad faith or that the objection is not curable – may order conversion of proceedings into liquidation;
3. Find that the Objection(s) has/have no substantial merit or that the same has/have been cured; in which case, the Pre-Negotiated Rehabilitation Plan shall be deemed approved

Source – Section 80

What is the Maximum Time Period for Approval of the Pre-Negotiated Rehabilitation Plan?

- The Pre-Negotiated Rehabilitation Plan must be approved within a Maximum Period of one hundred twenty (120) days from date of filing of the Petition
- If Court fails to act within such period, the Pre-Negotiated Rehabilitation Plan is deemed approved

Source – Section 81

OUT OF COURT OR INFORMAL AGREEMENTS OR REHABILITATION PLANS

What is the role of the Court with respect to Out of Court or Informal Agreements or Rehabilitation Plans?

- The general rule is that the Courts have NO role. The only role Court may possibly have is for assistance under Section 89
- The Agreement or Plan becomes effective upon lapse of fifteen (15) days from date of required last publication of notice
- No Court action can stay its implementation and the only stay against it may be through a Temporary Restraining Order or injunctive relief from the Court of Appeals
- If any case is filed by any creditor while the parties are negotiating and finalizing an Out of Court or Informal Agreement or Rehabilitation Plan, the Court can dismiss the case if there is a valid Standstill Period agreed upon by the parties as provided for under Section 85

Source – Sections 85, 86, 88 and 89

When can the Court render assistance with respect to Out of Court or Informal Agreements or Rehabilitation Plans?

- Upon Motion of the insolvent debtor
- Only for execution or implementation of the Out of Court or Informal Agreement or Rehabilitation Plan
- Similar to enforcement of Compromise Agreement
- Guided by Rules of Procedure promulgated by the Supreme Court

Source – Section 89

What are the minimum requirements for Out of Court or Informal Agreements or Rehabilitation Plans?

1. Debtor must agree to the Out of Court or Informal Agreements or Rehabilitation Plans;
2. Must be approved by creditors representing at least 67% of the secured obligations of the debtor;
3. Must be approved by creditors representing at least 75% of the unsecured obligations of the debtor; and
4. Must be approved by creditors holding at least 85% of the total liabilities, secured and unsecured of the debtor

Source – Section 84

What is the Standstill Period which allows a Court to dismiss cases filed within said period?

- The Standstill Period is agreed upon by parties pending negotiation and finalization of the Out of Court or Informal Agreement or Rehabilitation Plan
- This is also effective and enforceable not only against contracting parties but also against other creditors

Source – Section 85

What are the requirements for the validity of a Standstill Period?

1. Such agreement is approved by more than 50% of the total liabilities of the debtor
 2. Notice thereof is published in a newspaper of general circulation in the Philippines once a week for 2 consecutive weeks; and
 3. Standstill period does not exceed 120 days from date of effectivity
- Notice must invite creditors to participate in the negotiation and notify them that said agreement will be binding on all creditors if the required majority votes in Sec. 84 are met

Source – Section 85

How does the Out of Court or Informal Agreement or Rehabilitation Plan take effect?

- Notice of such Agreement or Plan must be published once a week for at least 3 consecutive weeks in a newspaper of general circulation in the Philippines
- It shall take effect upon lapse of 15 days from date of last publication of the notice
- It will have the same effect as a confirmed Rehabilitation Plan under Sec. 69
- Any amendment must be made in accordance with the terms of the Agreement or Plan and with due notice to all creditors

Source – Sections 86 and 87

LIQUIDATION OF INSOLVENT JURIDICAL DEBTOR

What to check in the Petition

1. Who is filing?

Petitions for Liquidation can be filed either by

- a. Insolvent juridical debtor voluntarily; or
- b. Its creditors

Source – Sections 90 and 91

2. If filed by the debtor, how has it been filed?

- a. Via original Petition; or
- b. Via Motion at any time during the pendency of a Court-supervised or pre-negotiated rehabilitation proceedings; to convert rehabilitation proceedings into liquidation proceedings with the debtor seeking immediate dissolution and termination of its corporate existence

Source – Section 90

3. Does the Debtor-Filed Petition/Motion contain the following requirements?

- a. Verification – to establish insolvency of the debtor; and
- b. Attachments (as enumerated hereinafter)

Source – Section 90

4. Are the following required Attachments or Inclusions in the Debtor-Filed Petition/Motion complete?

- a. Schedule of debtor's debts and liabilities, including list of creditors with their addresses, amounts of claims and collaterals or securities, if any;
- b. Inventory of all its assets, including receivables and claims against third parties; and
- c. Names of at least three (3) nominees to the position of Liquidator

Source – Section 90

5. If filed by the creditor, how has it been filed?

- a. Via original Petition; or
- b. Via Motion at any time during the pendency of a Court-supervised or pre-negotiated rehabilitation proceedings; to convert rehabilitation proceedings into liquidation proceedings

Source – Section 91

6. What are the requirements for a Creditor-Filed Petition for Involuntary Liquidation?

- a. It should be filed by 3 or more creditors, with an aggregate claim of at least either One Million Pesos (P1M) or twenty five percent (25%) of the subscribed capital stock or partners' contribution of debtor, whichever is higher;
- b. The debtor must be insolvent; and
- c. Petition should show that
 - (1) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made at least one hundred eighty (180) days or that the debtor has failed generally to meet its liabilities as they fall due; and
 - (2) there is no substantial likelihood that the debtor may be rehabilitated

Source: Section 91

7. What are the requirements for a Motion Instigated Converted Action for Involuntary Liquidation?

- a. Motion should be filed by three (3) or more creditors with claims of at least either One Million Pesos (P1M) or twenty five percent (25%) of the subscribed capital stock or partners' contribution of debtor, whichever is higher;
- b. Motion must be filed any time during the pendency of or after a Rehabilitation Court-Supervised or Pre-Negotiated Rehabilitation Proceedings with such Court where the rehabilitation proceedings is pending;
- c. Motion must pray that the rehabilitation proceedings be converted into Liquidation proceedings and that movants seek immediate liquidation of the debtor; and
- d. Motion should be verified and should show that
 - (1) there is no genuine issue of fact or law on the claim/s of the petitioner/s, and that the due and demandable payments thereon have not been made at least one hundred eighty (180) days or that the debtor has failed generally to meet its liabilities as they fall due; and
 - (2) there is no substantial likelihood that the debtor may be rehabilitated

Source: Section 91

What action must the Court take if the Petition or Motion for Voluntary Liquidation is sufficient in form and substance?

- The Court should issue a Liquidation Order as mentioned in Section 112
Source: Section 90

What action must the Court take if the Petition or Motion for Involuntary Liquidation is sufficient in form and substance?

The Court should issue an Order:

1. Directing publication of the Petition or Motion in a newspaper of general circulation once a week for two (2) consecutive weeks; and
2. Directing the debtor and all creditors who are not petitioners to file their Comments on the Petition or Motion within fifteen (15) days from the date of last publication

Source: Section 91

When should the Court issue a Liquidation Order in Involuntary Liquidation proceedings?

- The Court issues a Liquidation Order mentioned in Section 112 if, after considering the Comments filed, it determines that the Petition or Motion is meritorious

Source: Section 91

What are the instances when the Court may order conversion of rehabilitation proceedings into liquidation proceedings?

Court may order conversion of Rehabilitation proceedings into Liquidation proceedings pursuant to the following provisions –

1. Section 25(c) – Within 10 days from receipt of the Report of the Rehabilitation Receiver, the Court, instead of giving due course to the Petition or dismissing it, may convert the proceedings into one for liquidation of the debtor upon a finding that
 - a. the debtor is insolvent and
 - b. there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the Supreme Court Rules;
2. Section 72 – if no Rehabilitation Plan is approved within one (1) year from date of filing of the Petition, proceedings may upon motion or motu proprio be converted into one for liquidation of the debtor;
3. Section 75 – if the Rehabilitation proceeding is terminated due to failure of rehabilitation or dismissal of the Petition for reasons other than technical grounds, proceedings are immediately converted to liquidation proceedings;
4. Section 90 – Debtor may file a Motion to convert rehabilitation proceedings into liquidation and seek immediate dissolution and termination of its corporate existence;
5. Section 91 – Creditors may file a Motion in the Court where rehabilitation proceedings are pending to convert it into Liquidation proceedings and move for immediate Liquidation of the debtor; and

6. At any other time upon recommendation of the Rehabilitation Receiver that rehabilitation of debtor is not feasible

Source: Section 92

What action should the Court take once Rehabilitation Proceedings are converted into Liquidation Proceedings?

- Court should issue a Liquidation Order under Section 112
- An exception would be when the Involuntary Liquidation proceedings is via Motion of creditors, in which case the Court must first consider the Comments filed and thereafter determine if the Petition or Motion is meritorious, before issuing a Liquidation Order

Source: Sections 91 and 92

What is the effect of the FRIA provisions on Liquidation on the SEC powers?

- The FRIA provisions on Liquidation shall not affect the regulatory powers of the SEC under Sec. 6 of PD 902-A with respect to any dissolution and liquidation proceeding initiated and heard before it

Source: Section 93

Note – Although the Court has jurisdiction over liquidation of partnerships and corporations, the power to dissolve and remove them from the Registry of Legal Entities remains with the SEC

INSOLVENCY OF INDIVIDUAL DEBTORS

A. Suspension of Payments

Who can file a Petition for Suspension of Payments?

- An individual debtor
 1. With sufficient property to cover all his debts;
 2. But sees impossibility of meeting them when they fall due can file a Petition for Suspension of Payments

Source: Section 94

What are the requirements for a Petition for Suspension of Payments?

1. Petition must be verified;
2. Petition must be filed in Court where petitioner resides at least six (6) months prior to the filing of the Petition;
3. The following minimum requirements are attached to the Petition:
 - a. Schedule of debts and liabilities;
 - b. Inventory of assets; and
 - c. Proposed agreement with creditors

Source: Section 94

Note – Court can require petitioner to submit a Barangay Certification of Residency to show compliance with the (6) six months prior residency period

What should the Court do if it finds the Petition sufficient in form and substance?

- The Court should issue an Order within five (5) working days from filing of the Petition

Source: Section 95

What should this first Order issued by the Court direct?

1. Call a meeting of all creditors named in the schedule of debts and liabilities not less than fifteen(15) days nor more than forty(40) days from date of such Order and designate the date, time and place of the meeting;

2. Direct creditors to prepare and present written evidence of their Claims before the scheduled creditors' meeting;
3. Direct publication of the Order in a newspaper of general circulation in the province or city where Petition filed once a week for 2 consecutive weeks, with the first publication to be made within (7) seven days from time of issuance of the Order;
4. Direct Clerk of Court to cause the sending of a copy of the Order by registered mail, postage prepaid, to all creditors named in the schedule of debts and liabilities;
5. Forbid the individual debtor from selling, transferring, encumbering or disposing in any manner of his property, except those used in the ordinary course of business in which he is engaged so long as proceedings relative to the suspension of payments is pending;
6. Prohibit individual debtors from making any payment outside of the necessary or legitimate expenses of his business, so long as the proceedings are pending; and
7. Appoint a Commissioner to preside over the creditors' meeting

Source: Section 95

What is a Suspension Order and when can a Court issue one?

- A Suspension Order suspends any Pending Execution against the Debtor
- It is issued upon Motion by the debtor
- Suspension Order does not apply to properties held as security by secured creditors
- Suspension Order shall lapse
 1. When (3) three months shall have passed without proposed agreement being accepted by the creditors; or
 2. As soon as such proposed agreement is denied

Source: Section 96

Can creditors still file actions to collect their claim from the debtor once a Petition for Suspension of Payment has been filed and is pending?

- As a general rule, no

Source: Section 96

What are the exceptions to the general rule that creditors can no longer file actions to collect their claim from the debtor once a Petition for Suspension of Payment has been filed and is pending?

1. Creditors with claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of debtor incurred 60 days immediately prior to filing of Petition; and
2. Secured creditors

Source: Section 96

What are the requirements for a valid Creditors' Meeting?

- Creditors holding claims amounting to at least 3/5 of the liabilities should be present at the meeting

Source: Section 97

Note – It is advisable to compute the amount equivalent to 3/5 of the liabilities beforehand so that it would be easy to see if the claims of the creditors present meet the said minimum amount

What are the Rules to be observed in a Creditors' Meeting?

1. The Court appointed Commissioner shall preside over the meeting;
2. The Branch Clerk of Court shall act as Secretary;
3. The Branch Clerk of Court shall record the creditors present and the amount of their respective claims;
4. The Commissioner shall examine the written evidence of the claims and shall declare the meeting open for business if there are creditors with at least 3/5 of liabilities of the debtor;
5. Creditors and the debtor shall discuss the propositions in the proposed agreement and put them to a vote;
6. A majority vote is required for propositions to be affirmed;
7. After voting result has been announced, all protests made against the majority vote shall be drawn up; and
8. The Commissioner and debtor together with all creditors taking part in the voting shall sign the affirmed propositions

Source: Section 97

Note – Though it is not expressly provided for, the Creditors' Meeting is best held at the Court room where a Stenographer can be assigned to assist the Branch Clerk of Court and take down minutes of the Meeting, including the voting results and protests made against the majority vote. With the help of the Stenographer, the affirmed propositions can be made available for immediate signing of the attendees.

What is the majority vote requirement?

1. 2/3 of the creditors voting must unite upon the same proposition; and
2. Claims represented by said majority vote amount to at least 3/5 of the total liabilities of the debtor

Source: Section 97

Note – It would be a good practice to compute the significant figures beforehand – 3/5 of the total liabilities of the debtor and 2/3 of the creditors voting

Which creditors are not allowed to vote at the Creditors' Meeting?

- No creditor who incurred his credit within (90) ninety days prior to the filing of the Petition shall be entitled to vote
Source: Section 97

Note – The Petitioner may be asked to prepare a listing of the Creditors with the corresponding dates when their credits were incurred in order to immediately highlight which creditors are barred from voting at the Meeting.

Query – If such a creditor who is barred from voting attends the Creditors' Meeting, will its presence be included in determining the 3/5 total liability necessary for the meeting to push through?

Which creditors may refrain from voting at the Creditors' Meeting?

- The following creditors who are unaffected by the Suspension Order may refrain from attending the meeting and voting
 1. creditors with claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of debtor incurred 60 days immediately prior to filing of Petition; and
 2. secured creditors
- These creditors are not bound by any agreement determined at such meeting
- If they join the voting, they shall be bound in same manner as other creditors
Source: Section 98

When is a Proposed Agreement Deemed Rejected?

- A Proposed Agreement is Deemed Rejected if
 1. The number of creditors required to hold a meeting do not attend; or
 2. If the (2) two majorities mentioned in Section 97 are not in favor thereof
Source: Section 99

What is the effect if a Proposed Agreement is Deemed Rejected?

- The proceedings shall be terminated without recourse
- The parties concerned shall be at liberty to enforce their rights
Source: Section 99

What are the requirements for the filing of Objections to the Affirmed Proposed Agreement?

- The filing creditor must have attended the meeting and dissented from and protested against the majority vote
- The Objections must be filed with the Court within ten(10) days from date of the last creditors' meeting

Source: Section 100

What are the causes for which objections may be made to the Affirmed Proposed Agreement?

1. Defects in the call for the meeting, in the holding thereof, in the deliberation had thereat – which prejudice creditors' rights;
2. Fraudulent connivance between (1) one or more creditor and the debtor to vote in favor of the proposed agreement; or
3. Fraudulent conveyance of claims for purpose of obtaining a majority

Source: Section 100

What action should the Court take upon receipt of Objections to the Affirmed Proposed Agreement?

- Court should check that the requirements, above, have been met
- It should hear and pass upon such Objections as soon as possible and in a summary manner
- In case the majority decision is annulled by the Court, the Court shall declare proceedings terminated and the creditors shall be at liberty to exercise their rights

Source: Section 100

When is an Affirmed Proposed Agreement deemed Approved?

- An Affirmed Proposed Agreement is deemed Approved when:
 1. The majority decision to approve the proposed agreement or its amendment is upheld by the Court after considering the Objections raised by creditors; or
 2. When no opposition or objection to said decision has been presented

Source: Section 101

What action should the Court take on the Approved Agreement or Amendment?

- It should issue an Order confirming the approval of the Proposed Agreement or Amendment
- The Order should direct that the Agreement be carried out and that all parties bound thereby must comply with its terms
- It can also issue all Orders necessary or proper to enforce the Agreement on Motion of any interested party

Source: Section 101

Who are bound by the Court Order confirming approval of the Proposed Agreement or Amendment?

- The Order shall be binding upon all creditors whose claims are included in the schedule of debts and liabilities submitted and who were personally summoned
- The Order shall not be binding upon
 1. Creditors with claims for personal labor, maintenance, expense of last illness and funeral of the wife or children of debtor incurred 60 days immediately prior to filing of Petition; and
 2. Secured creditors who did not attend the meeting or refrained from voting therein

Source: Section 101

What is the effect of the Debtor's Failure to Perform the Agreement?

- If the debtor fails, in whole or in part, to perform the Agreement – all rights which creditors had against the debtor before the Agreement shall revert in them
- The debtor may be subject to insolvency proceedings

Source: Section 102

B. VOLUNTARY LIQUIDATION

Who can file a Petition for Voluntary Liquidation?

- An individual debtor
 1. With properties not sufficient to cover his liabilities; and
 2. With debts exceeding Five Hundred Thousand Pesos (P500,000.00)

Source: Section 103

What are the requirements for a Petition for Voluntary Liquidation?

1. Petition must be verified;
2. Petition must be filed in Court where debtor has resided for at least six (6) months before its filing;
3. The following must be attached to the Petition:
 - a. Schedule of debts and liabilities; and
 - b. Inventory of assets
4. Prayer is to be discharged from his debts and liabilities

Source: Section 103

Note - Court can require petitioner to submit Barangay Certification of residency to show compliance with the six (6) months prior residency period

What is the effect of the filing of the Petition for Voluntary Liquidation?

- The filing of the Petition shall be an act of insolvency

Source: Section 103

What action should the Court take upon the filing of a Petition for Voluntary Liquidation?

- If the Court finds the Petition sufficient in form and substance, it shall issue a Liquidation Order within five (5) working days

Source: Section 104

C. INVOLUNTARY LIQUIDATION

What to Check in the Petition

1. Who is filing?

- Petitions for Involuntary Liquidation can be filed by any creditor or group of creditors with claim of at least Five Hundred Thousand Pesos (P500,000.00)

Source: Section 105

2. Does the Petition meet the following requirements?

- Petition must be verified
- It is filed with Court where the individual debtor resides
- At least one act of insolvency of the individual debtor must be cited in the Petition

Source: Section 105

Note – The Petitioners may also be required to submit a Barangay Certificate of Residency of the individual debtor

3. What are the acts of insolvency?

- Person is about to depart or has departed from the Philippines with intent to defraud creditors;
- Being absent from Philippines, with intent to defraud creditors, he remains absent;
- Conceals himself to avoid service of legal process for purpose of hindering or delaying liquidation or of defrauding his creditors;
- Conceals, or is removing any of his properties to avoid its being attached or taken on legal process;
- Suffered his property to remain under attachment or legal process for three (3) days for the purpose of hindering or delaying liquidation or of defrauding any creditor or claimant;

- f. Confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying liquidation or of defrauding his creditors or claimants;
- g. Willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying liquidation or of defrauding his creditors;
- h. Suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder or delay liquidation or of defraud his creditors;
- i. Made any assignment, gift, sale, conveyance or transfer of his estate, property, rights or credits with intent to hinder or delay liquidation or of defraud his creditors;
- j. Has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights or credits;
- k. Being a merchant or tradesman, has generally defaulted in the payment of his current obligations for a period of thirty (30) days;
- l. For a period of thirty (30) days, had failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary; and
- m. An execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment

Source: Section 105

What action must the Court take upon the filing of a Petition for Involuntary Liquidation?

- The Court must issue an Order containing the following directives:
 1. Setting case for hearing on which date the individual debtor must show cause why he should not be adjudged an insolvent;
 2. Upon good cause shown, forbidding the individual debtor from making payments of any his debts and transferring any property belonging to him; and
 3. Fixing the amount of the bond which must be filed by the petitioners and setting the deadline for the filing thereof

Source: Section 106

Note – Considering that Sec. 108 requires an Affidavit showing compliance with publication requirements before an Order for Taking of Property may be issued, it is advisable to include in the initial Order a fourth directive, to wit –

4. Directing the petitioners to cause publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks (patterned after Sec. 91)

When can the Court issue a Liquidation Order?

- Court can issue a Liquidation Order when:
 1. The individual debtor shall default; or
 2. If after trial, issues are found in favor of petitioners

Source: Section 107

What is the effect of a Petition for Involuntary Liquidation or Liquidation Order upon Secured Creditors?

- Neither affects the right of secured creditors to enforce their lien

Source: Section 106

When Can the Court Order the Taking of Property of the Individual Debtor?

- In cases where the individual debtor:
 1. Resides outside the Philippines;
 2. Has departed therefrom;
 3. Cannot, after due diligence, be found; or
 4. Conceals himself to avoid service of the Show Cause Order or other preliminary process or Orders of the Court

Source: Section 108

What are the requirements before the Court can Order such Taking of Property?

- Petitioning creditors must submit the following:
 1. Affidavit proving compliance with publication requirements; and
 2. Bond in double the amount of their aggregate claims

Source: Section 108

What should the Order for the Taking of Property direct?

- The Order shall direct the Sheriff to take into his custody sufficient amount of property of the individual debtor to satisfy:
 1. The demands of the petitioning creditors; and
 2. Costs of proceedings

Source: Section 108

Is an Order for the Taking of Property of the individual debtor available only to Petitioning Creditors?

- No, other creditors may apply for such an Order with the Court

Source: Section 109

What are the requirements for an Application for the Taking of Property if filed by creditors other than the Petitioning Creditors?

1. There must still be property of the individual debtor not exempt from execution (even after the original taking of property by the Sheriff to cover the demands of the petitioning creditors and costs of proceedings);
2. The applying creditor or creditors must file a Bond in double the amount of their claims, which Bond must be approved by Court

Source: Section 109

What is the duty of the Sheriff upon receipt of such Order for the Taking of Property?

1. Take possession of property and effects of the individual debtor, not exempt from execution, to extent sufficient to cover the amount provided for;
2. Prepare, within three (3) days from taking, a complete Inventory of the property so taken;
3. File the Inventory with the Clerk of Court as soon as completed;
4. Prepare a Schedule of names and residences of the creditors and amounts due each from the individual debtor's books or from such other papers of the individual debtor that come into his possession and file this Schedule or List of Creditors with the Clerk of Court; and
5. Hold all such property taken by virtue of the Bond for the benefit of all creditors of the individual debtor whose claims shall be duly proved

Note – The time for taking property and making inventory may be extended for good cause

Source: Sections 108 and 109

What are the conditions for the bond?

- The bond shall:
 1. Be deemed void if Court finds for the petitioners upon hearing of the Petition in insolvency;
 2. Answer for damages sustained by the individual debtor if the proceedings are dismissed and the Court finds in the individual debtor's favor; the amount of damages shall be fixed by the Court

Source: Section 109

When is an Appeal Bond required and what are the requirements therefor?

- If either the petitioner or individual debtor shall appeal from the Court's decision, an Appeal Bond shall be required
- The Appeal Bond shall be given to the successful party in a sum double the amount of the value of property in controversy and for costs of proceedings

Source: Section 109

Note – The Decision referred to which is subject to appeal is the Liquidation Order

How can the Bond(s) be challenged?

- Any person interested in the estate may take exception to the sufficiency of sureties on the bond(s)
- The Court shall set case for hearing, with notice to person(s) excepting, of not less than two (2) nor more than five (5) days
- On such hearing date, the surety(ies) must justify the sufficiency of their bond to the Court
- If surety fails to justify, the Court must issue an Order vacating the Order to Take Property or denying the Appeal, as the case may be

Source: Section 109

Note – The law refers to Appeal Bond and denial of Appeal, which would imply that mode of appeal is via an Ordinary Appeal under Rule 41 of the Rules of Court (not Petition for Review under Rule 43 as in the case of Rehabilitation per A.M. No. 04-9-07-SC, there being no new Rules as yet)

When can the Property Taken be Sold Under Execution?

- Upon Motion of Petitioning Creditors
- Motion must satisfactorily show to the Court that interest of parties will be subserved by its sale
- Court may order sale of property in same manner as sale under execution
- The Proceeds of the sale must be deposited in Court to abide by result of the proceedings

Source: Section 110

PROVISIONS COMMON TO LIQUIDATION IN INSOLVENCY OF INDIVIDUAL AND JURIDICAL DEBTORS

A. LIQUIDATION ORDER

What should the Liquidation Order direct?

1. Declare debtor insolvent;
2. Order liquidation of debtor and, in case of a Juridical Debtor, declare it as dissolved;
3. Order the Sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
4. Order publication of the Petition or Motion in a newspaper of general circulation once a week for two (2) consecutive weeks;
5. Direct payment of any claims and conveyance of any property due the debtor to the liquidator;
6. Prohibit payments by the debtor and the transfer of any property by the debtor;
7. Direct all creditors to file their claims with the liquidator within the period set by the Rules of Procedure;
8. Authorize the payment of administrative expenses as they become due;
9. State that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of Liquidator; and
10. Set the case for hearing for the election and appointment of the Liquidator, which date shall not be less than thirty (30) days nor more than forty five (45) days from date of last publication

Source: Section 112

What are the effects of the Liquidation Order?

- Upon issuance of the Liquidation Order:
 1. The juridical Debtor shall be deemed dissolved and the corporate or juridical existence terminated;
 2. Legal title to and control of all assets of the debtor, except those exempt from execution, shall be deemed vested in the Liquidator, or pending his election and appointment, with the Court;
 3. All contracts of the debtor shall be deemed terminated and/or breached, unless the Liquidator, within ninety (90) days from date of his assumption of office, declares otherwise and the contracting party agrees;
 4. No separate action for collection of an unsecured claim shall be allowed;
 - a. pending actions will be transferred to the Liquidator for him to accept and settle or contest;

- b. if Liquidator contests or disputes the claim, Court will allow, hear and receive such contest, except when case already on appeal; and
 - c. suit may proceed to judgment and any final and executory judgment therein for a claim against the debtor shall be filed and allowed in Court; and
 5. No foreclosure proceeding shall be allowed for a period of one hundred eighty (180) days
- Source: Section 113

What is the effect of the Liquidation Order upon secured creditors?

- The Liquidation Order shall not affect the right of secured creditors to enforce their lien
- Source: Section 114

What are the options available to a secured creditor when the debtor is under liquidation?

- Secured creditor may
 1. Waive his right under the security or lien, prove his claim in the Liquidation proceedings and share in the distribution of the assets of the Debtor; or
 2. Maintain his rights under the security or lien
 - If he maintains his rights under the security or lien:
 1. The value of the property may be fixed in manner agreed upon by creditor and Liquidator;
 - if property value is less than claim it secures, Liquidator may convey property to the secured creditor; creditor will then be admitted in the Liquidation proceedings as a creditor for the balance
 - if property value exceeds claim secured, Liquidator may convey property to the creditor and waive the Debtor's right of redemption upon receiving excess from the creditor
 2. Liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
 3. Secured creditor may enforce the lien or foreclose on the property
- Source: Section 114

B. THE LIQUIDATOR

How is the Liquidator Elected?

- Election of the Liquidator shall be in open Court

- The nominees should first be determined to qualify to stand as Liquidator under Section 118/29
- The nominee receiving the highest number of votes cast in terms of amount of claims, and qualified under Section 118/29, shall be appointed as Liquidator
Source: Section 115

Who are allowed to vote in the election for the Liquidator?

- Only creditors who have filed their claims within the period set by the Court and whose claims are not barred by statute of limitations will be allowed to vote in the election of the Liquidator
- A secured creditor will not be allowed to vote unless
 1. He waived his security or lien; or
 2. Has the value of the property subject of his security or lien fixed by agreement with the Liquidator and is admitted for the balance of his claim
 Source: Section 115

When can the Court appoint a Liquidator?

- Court may appoint the Liquidator if:
 1. On date set for election of the Liquidator, creditors do not attend;
 2. Creditors who attend fail or refuse to elect a Liquidator;
 3. After being elected, the Liquidator fails to qualify; OR
 4. A vacancy occurs for any reason whatsoever
- In any case, Court may instead set another hearing of election of the Liquidator
- Nothing prevents the Rehabilitation Receiver, who was administering the Debtor prior to Liquidation, from being appointed as Liquidator
Source: Section 116

What must the Liquidator do upon his election and appointment as such?

- Prior to entering upon his powers, duties and responsibilities, the Liquidator shall take an Oath and file a Bond
- The Bond shall be in an amount fixed by the Court
- The Bond shall be conditioned upon the proper and faithful discharge of his powers, duties and responsibilities
Source: Section 117

What are the Qualifications of the Liquidator?

- Minimum qualifications
 1. Philippine citizen or resident for six (6) months prior to nomination;

2. Of good moral character and with acknowledged integrity, impartiality and independence;
 3. Has the requisite knowledge of insolvency and other relevant commercial laws, rules and procedures as well as relevant training and/or experience that may be necessary to enable him to properly discharge the duties and obligations of a Liquidator; and
 4. Has no conflict of interest; provided that such conflict of interest may be waived, expressly or impliedly, by a party who may be prejudiced thereby
- Other qualifications and disqualifications – set forth in procedural rules, taking into consideration nature of business of debtor and the need to protect the interest of all stakeholders concerned

Source: Sections 118 and 29

What are the Powers, Duties and Responsibilities of the Liquidator?

- The Liquidator is deemed an officer of the Court
- His principal duty is to preserve and maximize the value and recover assets of the Debtor
- His goal is to liquidate all assets of the Debtor and discharge to the extent possible all claims against the Debtor
- The Liquidator's powers, duties and responsibilities include, but are not limited to the following:
 1. Sue and recover all the assets, debts and claims, belonging or due to the Debtor;
 2. Take possession of all the property of the Debtor except those exempt from execution;
 3. Sell, with Court approval, any property of the Debtor which has come into his possession or control;
 4. Redeem all mortgages and pledges, and so satisfy any judgment which may be an encumbrance of any property sold by him;
 5. Settle all accounts between the Debtor and his creditors, subject to Court approval;
 6. Recover any property or its value, fraudulently conveyed by the Debtor;
 7. Recommend to the Court the creation of a creditor committee which will assist him in the discharge of his functions and which shall have powers as the Court deems just, reasonable and necessary; and
 8. Upon Court approval, engage such professionals as may be necessary and reasonable to assist him
- In addition to rights and duties of the Rehabilitation Receiver, the Liquidator shall have the right and duty to:
 1. Take all reasonable steps to manage and dispose of the Debtor's assets with view to maximizing proceeds therefrom;
 2. Pay creditors and stockholders; and
 3. Terminate the debtor's legal existence

- Other duties may be established by Rules of Procedure
Source: Section 119

How can the Liquidator be removed?

- The Liquidator may be removed any time for cause
 1. By the Court motu proprio; or
 2. By Motion of any creditor entitled to vote in his election as Liquidator
- Liquidator shall be subject to removal pursuant to procedures for removing the Rehabilitation Receiver
Source: Sections 118 and 119

What are the grounds for removal of the Liquidator?

- Grounds for removal include, but are not limited to, the following:
 1. Incompetence, gross negligence, failure to perform or exercise proper degree of care in performance of duties and powers;
 2. Lack of particular or specialized competency required by specific case;
 3. Illegal acts or conduct in performance of duties and powers;
 4. Lack of qualification or presence of any disqualification;
 5. Conflict of interest that arises after his appointment; and/or
 6. Manifest lack of independence that is detrimental to general body of stakeholders
- Source: Section 119 and 32

What Compensation can the Liquidator receive?

- The Liquidator and persons hired by him to assist him shall be entitled to reasonable compensation as determined by the Liquidation Court
- The compensation must not exceed the maximum amount as may be prescribed by the Supreme Court
Source: Section 120

What are the Reporting Requirements that must be submitted by the Liquidator?

- The Liquidator must submit the following to the Court:
 1. Quarterly Report of all moneys received and all disbursements made by him or under his authority as Liquidator;
 2. Reports as required by the Court from time to time; and
 3. Final Report at end of the Liquidation proceedings
- The Reports must be made available to all interested parties
Source: Section 121

What are the requirements before the Liquidator may be discharged?

1. Liquidator must notify all creditors either by publication in newspaper of general circulation or such other mode as the Court may direct or allow of his filing of his Final Accounting and that the same will be set for hearing by the Court;
 2. Liquidator must file his Final Accounting with the Court, with proof of notice to all creditors;
 3. With the submission of his Final Accounting, the Liquidator must apply with the Court for settlement of his account and his discharge from liability as Liquidator; and
 4. The Court must set the Final Accounting of the Liquidator for hearing
- If Court finds the Final Accounting in order, it shall discharge the Liquidator
- Source: Section 122

C. DETERMINATION OF CLAIMS

What is the Registry of Claims to be established by the Liquidator?

- The Registry of Claims is a listing of the claims of secured and unsecured creditors against the debtor
 - There are two (2) kinds of Registry of Claims
 1. Preliminary Registry of Claims
 2. Registry of Claims with Undisputed Claims
- Source: Sections 123 and 125

What is the time period within which the Registry of Claims must be established by the Liquidator?

1. Preliminary Registry of Claims – within twenty (20) days from his assumption into office
 2. Registry of Claims with Undisputed Claims - upon expiration of thirty (30) day period for filing challenges to the claims
- Source: Sections 123 and 125

What are the differences between the two (2) types of Registry of Claims?

1. The Preliminary Registry of Claims is the first listing prepared by the Liquidator based on the claims on record; while the Registry of Claims with Undisputed Claims is the second listing prepared by the Liquidator after he removes those claims against which opposition or challenges have been posed and which opposition/challenges he found meritorious
2. The Preliminary Registry of Claims is a mere listing of claims submitted by the debtor and/or creditor(s); while the Registry of Claims with Undisputed Claims is already a filtered list resulting from the Liquidator's ruling on challenged claims

Source: Sections 123 and 125

What are the duties of the Liquidator with respect to the Registry of Claims?

1. He must prepare a preliminary Registry of Claims of both secured and unsecured creditors within twenty (20) days from his assumption into office;
2. He shall make the Registry of Claims available for public inspection;
3. He shall also make publication notice of the Registry to creditors, individual debtors owners of the sole proprietorship debtor, partners of partnership debtor and stockholders or members of corporation debtor on when and where they may inspect the Registry of Claims;
4. He must resolve disputed claims and submit his findings thereon to the Court for final approval;
4. He may disallow claims; and
5. He must submit a Registry of Claims with Undisputed Claims to the Court upon expiration of the period for filing challenges to the claims

Source: Sections 123, 125 and 126

When can claims against the debtor be paid?

- All claims must be duly proven before being paid
- If Debtor and creditor are mutually debtor and creditor of each other, one debt shall be set off against the other; only the balance, if any, shall be allowed in the Liquidation proceedings

Source: Sections 123 and 124

D. AVOIDANCE PROCEEDINGS

What transactions of the debtor may be rescinded or nullified?

1. Those entered into prior to issuance of Liquidation Order or Commencement Date (if converted rehabilitation proceedings); and
2. Executed with intent to defraud a creditor or creditors or which constitute undue preference of creditors

Note – presumptions set forth in Section 58 shall apply

Source: Section 127

Who may file such action for rescission or nullity?

1. Liquidator; or
2. Any creditor
 - a. With conformity of the Liquidator, or

- b. With leave of Court when Liquidator does not consent to the filing of action by the creditor
 - If leave of court granted after Liquidator does not consent, the Liquidator shall assign and transfer to the filing creditor all rights, title and interest in the chose in action or subject matter of the proceeding, including any document in support thereof
 - Any benefit derived from such proceeding, to extent of his claim and costs, shall belong exclusively to the creditor who filed the case
 - Any benefit surplus belongs to the estate
 - If before Order granting leave is made, the Liquidator signifies to the Court his readiness to institute the proceedings for the benefit of the creditors, the Court shall issue an Order fixing the time within which he shall do so and, if so filed within period allowed, the benefit derived will belong to the estate

Source: Section 128

E. THE LIQUIDATION PLAN

What are the duties of the Liquidator with respect to the Liquidation Plan?

- The Liquidator must submit a Liquidation Plan to the Court within three (3) months from his assumption into office
- The Liquidation Plan shall, as minimum, enumerate:
 1. All assets of the Debtor;
 2. A schedule of liquidation of the assets; and
 3. A schedule of payment of the claims

Source: Section 129

How can property of the debtor be exempt from execution?

- Debtor must file for exemption of such property before the Court
- The application will be set for hearing by the Court
- The Clerk of Court must provide Notice of Hearing of Application
 1. The Notice must be posted in at least three (3) public places in the Court venue at least ten (10) days prior to the hearing date;
 2. The Notice shall set forth the name of the insolvent Debtor, the time and place of hearing of the application, and shall briefly indicate the homestead sought to be exempted or property to be set apart
- Following such hearing, the Court shall issue an Order exempting and setting apart, for the use and benefit of the insolvent, such real and personal property exempt by law from execution and also a homestead
- The Exemption Order must show compliance with the notice requirements, which shall be conclusive evidence of such fact

Source: Section 130

How should assets of the debtor be sold in liquidation?

- The Liquidator may sell the unencumbered assets of the Debtor and convert the same into money
- Sale shall be at public auction
- Private sale may be allowed with Court approval if
 1. Goods to be sold are of perishable nature or are liable to quickly deteriorate in value or disproportionately expensive to keep or maintain;
 - or
 2. Private sale is for best interest of Debtor and his creditors
- With Court approval, unencumbered property of Debtor may also be conveyed to creditor in satisfaction of his claim or part thereof

Source: Section 131

How should the Liquidation Plan be implemented?

- The Liquidator shall implement the Liquidation Plan as approved by the Court
- Payments shall be made to creditors only in accordance with the Liquidation Plan
- The Liquidation Plan and its implementation shall ensure that the concurrence and preference of credits shall be observed; unless a preferred creditor voluntarily waives his preferred right
- Credits for services rendered by employees or laborers to the Debtor shall enjoy first preference under Art. 2244 of the Civil Code, unless claims constitute legal liens under Art. 2241 and 2242

Source: Sections 132 and 133

When can the Court order the SEC to remove the debtor from the registry of legal entities?

- Upon determining that the Liquidation has been completed
- Court shall issue an Order
 1. Approving the Final Liquidation Report; and
 2. Ordering the SEC to remove the Debtor from the registry of legal entities

Source: Section 134

When can the Court issue an Order terminating the proceedings?

- Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the SEC

Source: Section 135

F. LIQUIDATION OF SECURITIES MARKET PARTICIPANT

What is the effect of the FRIA provisions on a Securities Market Participant?

- The FRIA provisions shall be without prejudice to the powers of a regulatory agency or self-regulatory organization to liquidate trade-related claims of clients or customers of a securities market participant
- Trade-related assets include cash, securities, trading rights and other owned and used by the securities market participant in the ordinary course of business
- For purposes of investor protection, trade-related claims are deemed to have absolute priority over other claims of whatever nature or kind insofar as trade-related assets are concerned

Source: Section 136

PROCEEDINGS ANCILLARY TO OTHER INSOLVENCY OR REHABILITATION PROCEEDINGS

A. BANKS AND OTHER FINANCIAL INSTITUTIONS UNDER REHABILITATION RECEIVERSHIP PURSUANT TO A STATE- FUNDED OR STATE-MANDATED INSURANCE SYSTEM

What is the extent of Court involvement in rehabilitation proceedings involving banks and other financial institutions?

- The Court shall issue orders, adjudicate claims and provide other relief necessary to assist in the Liquidation of a financial institution under rehabilitation receivership established by a State-funded or State-mandated insurance system
- The Liquidation of banks, financial institutions, insurance companies and pre-need companies shall be determined by relevant laws
- FRIA provisions shall apply in a suppletory manner

Source: Sections 137 and 138

B. CROSS-BORDER INSOLVENCY PROCEEDINGS

What laws and rules govern Cross-Border Insolvency Proceedings?

- Subject to Section 136 and the Rules of Procedure which the Supreme Court may enact, the Model Law on Cross-Border Insolvency of the Uncitral is adopted as part of the FRIA

Source: Section 139

How can Court involvement in Cross-Border Insolvency be sought?

- A Petition must be filed by a representative of the foreign entity that is the subject of foreign proceedings

Source: Section 140

What action should the Court take in connection with Petitions involving Cross-Border Insolvency?

- Court shall first set the Petition for hearing
- Court may issue orders

1. Suspending any action to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines;
 2. Requiring the surrender of property of the foreign entity to the foreign representative; or
 3. Providing other necessary relief
- Source: Section 141

What are the factors that the Court should consider in granting the reliefs above?

- In determining whether to grant relief, the Court shall consider
 1. Protection of creditors in the Philippines and the inconvenience in pursuing their claims in a foreign proceeding;
 2. The just treatment of all creditors through resort to a unified insolvency or rehabilitation proceedings;
 3. Whether other jurisdictions have given recognition to the foreign proceeding;
 4. Extent that foreign proceeding recognizes the rights of creditors and other interested parties in manner substantially in accordance with the manner prescribed in the FRIA; and
 5. Extent that the foreign proceeding has recognized and shown deference to proceedings under FRIA and previous laws

Source: Section 142

FUNDS FOR REHABILITATION OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS

What are the Rules governing funds for the rehabilitation of GOCCs?

- Public funds for the rehabilitation of GOCCs shall be released only pursuant to an appropriation by Congress and shall be supported by funds actually available as certified by the National Treasurer
- The Department of Finance in collaboration with Department of Budget and Management shall promulgate Rules for the use and release of said funds

Source: Section 143

MISCELLANEOUS PROVISIONS

What are the punishable acts under the FRIA?

- The following are punishable offenses:
 1. Having notice of commencement of proceedings or having reason to believe that proceedings are about to commence or in contemplation of proceedings
 - a. Shall hide or conceal or destroy or cause to be destroyed or hidden any property belonging to the Debtor;
 - b. Shall hide, destroy, alter, mutilate or falsify or cause such to be done any book, deed, document or writing relating thereto;
 - c. Shall with intent to defraud creditors of Debtor, make any payment, sale, assignment, transfer or conveyance of any property of the Debtor;
 2. Having knowledge or belief of any person having proved a false or fictitious claim against the Debtor
 - a. Fails to disclose the same to the Rehabilitation Receiver or Liquidator within one (1) month after coming to said knowledge or belief; or
 - b. Attempts to account for any of the Debtor's property by fictitious losses or expenses;
 3. Shall knowingly violate a prohibition or knowingly fails to undertake an obligation established by the FRIA

Source: Section 145

Upon conviction, what are the corresponding punishment and fine for such offenses?

1. Fine of not more than One Million Pesos (P1,000,000.00); AND
2. Imprisonment of not less than three (3) months nor more than five (5) years for each offense

Source: Section 145

Who can be made liable for such offenses?

- The owner, partner, director, officer or other employee of the Debtor who commits any one of the enumerated offenses

Source: Section 145

To what cases shall the provisions of the FRIA apply?

- FRIA shall govern all Petitions filed after it has taken effect
- All further proceedings in Insolvency, Suspension of Payments and Rehabilitation cases pending, except to extent that in Court opinion application would not be feasible or would work injustice; in such case, the prior procedure will apply

Source: Section 146

To what contracts shall the provisions of the FRIA apply?

- The FRIA shall apply to all contracts of the Debtor regardless of their date of perfection

Source: Section 147

What laws are repealed by the FRIA?

- The Insolvency Law, Act No. 1956, is repealed
- All other inconsistent laws are repealed or modified accordingly

Source: Section 148

When shall the FRIA take effect?

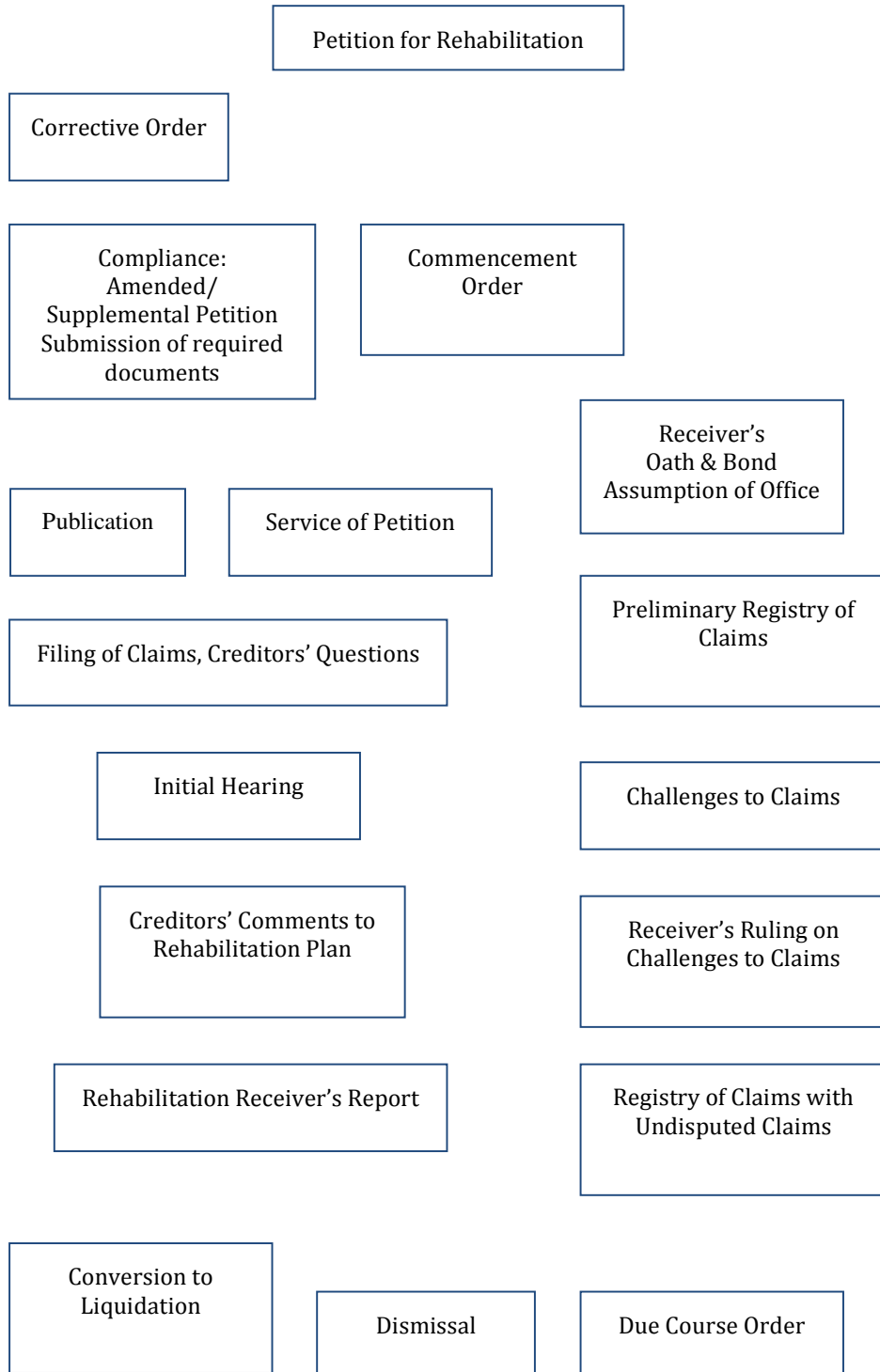
- Fifteen (15) days after complete publication in the Official Gazette or at least two (2) national newspapers of general circulation
- The FRIA took effect on 31 August 2010

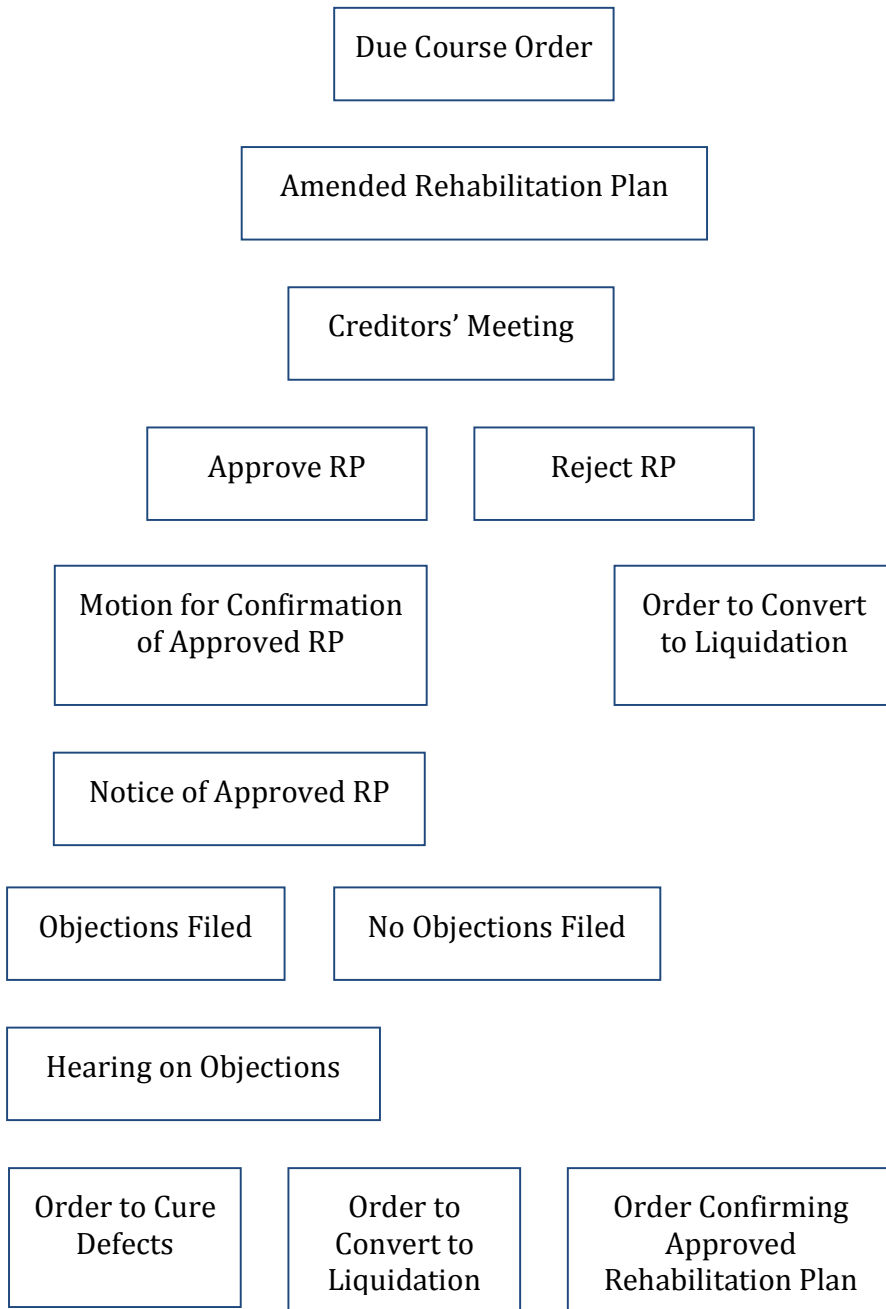
Source: Section 150

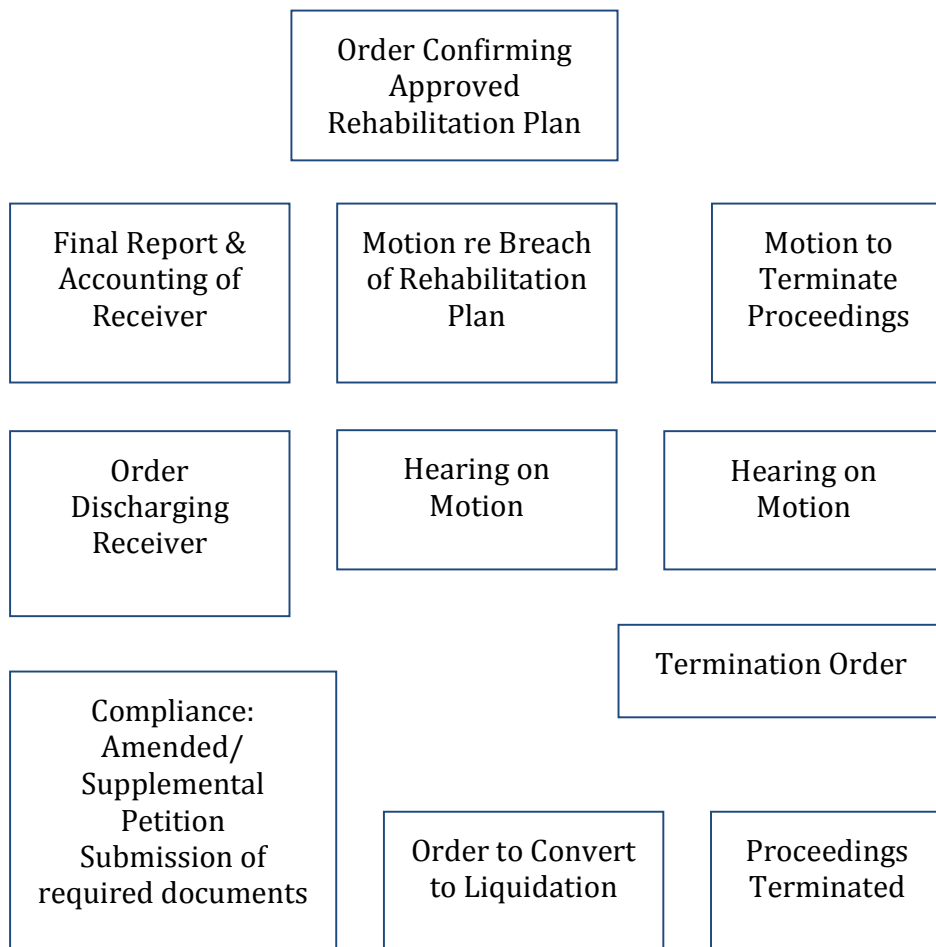
PART II

Procedural Charts

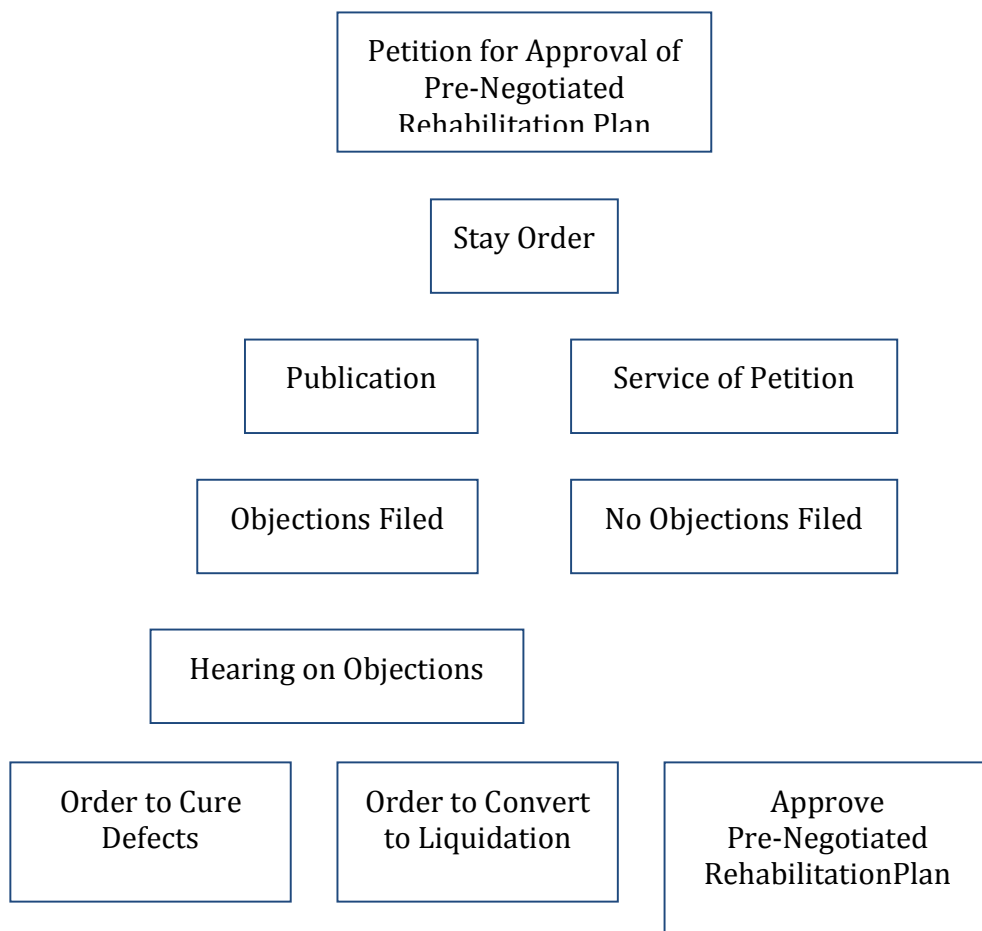
PETITION FOR COURT SUPERVISED REHABILITATION







PETITION FOR APPROVAL
OF PRE-NEGOTIATED
REHABILITATION PLAN



REGISTRY OF CLAIMS IN LIQUIDATION PROCEEDINGS

Preliminary Registry of Claims

- 20 days from assumption of office
- publication as to where and when inspection may be made

Disputed Claims

Findings & Ruling of Liquidator

Registry of Undisputed Claims

- upon expiration of period to file challenges to claims

LIQUIDATION ORDERS

Liquidation Order

No Foreclosure for 180 days
Dismiss all Collection cases
Pending Cases transferred to Liquidator

Publication

Hearing to Vote for Liquidator

Appointment of Liquidator With Oath & Bond

Quarterly Report

Final Report & Accounting

Publication of Final R&A

Hearing on Final Report & Accounting

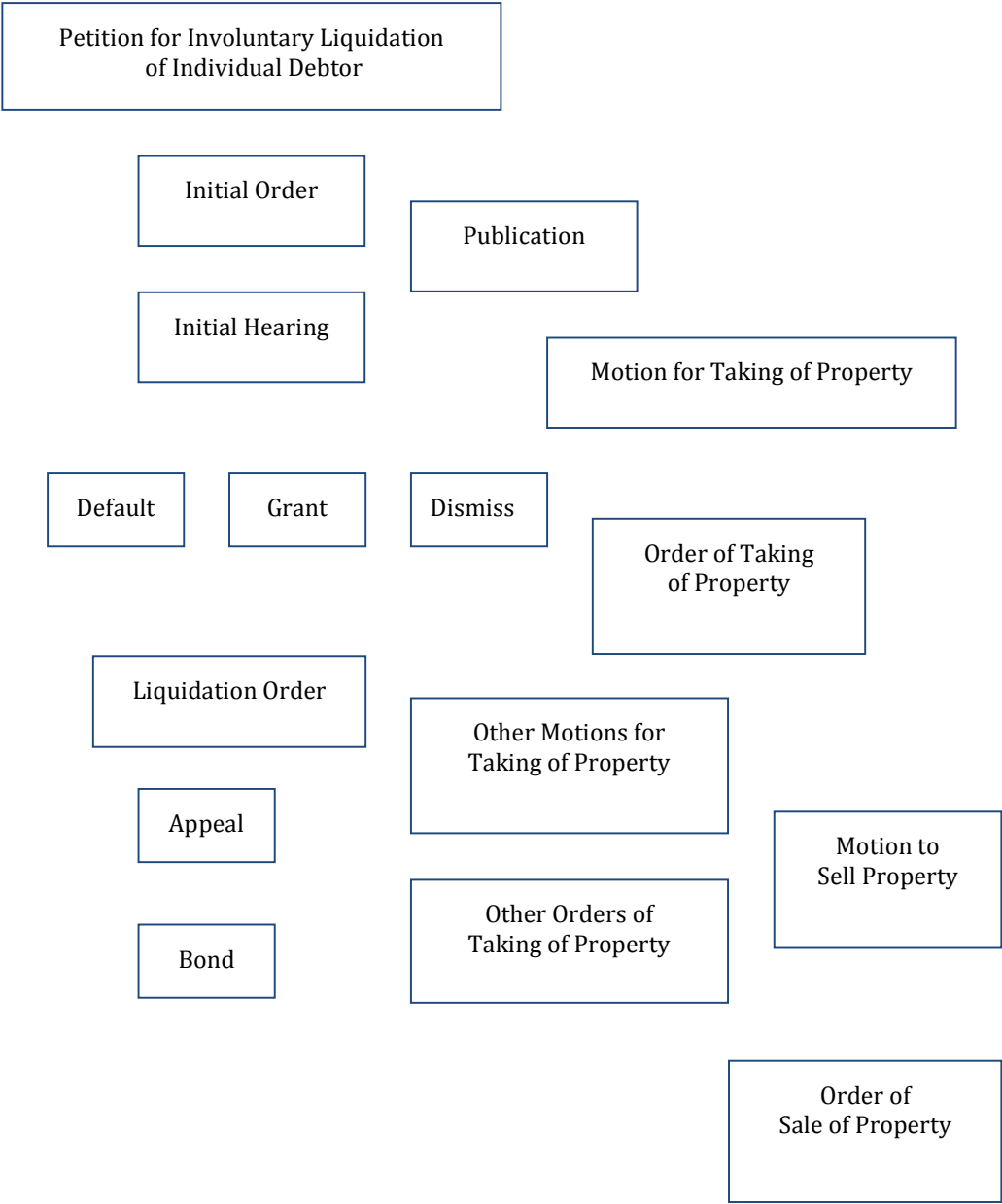
Require Corrections

Final Report & Accounting

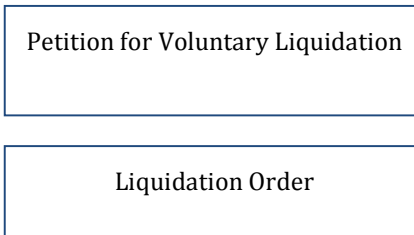
Hearing on Final Report & Accounting

Discharge of Liquidator

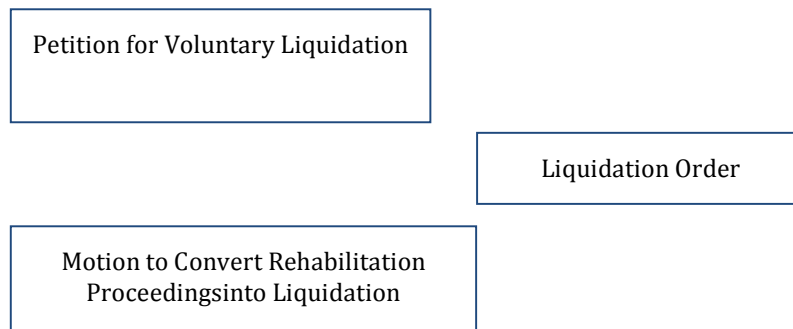
PETITION FOR INVOLUNTARY LIQUIDATION OF INDIVIDUAL DEBTOR



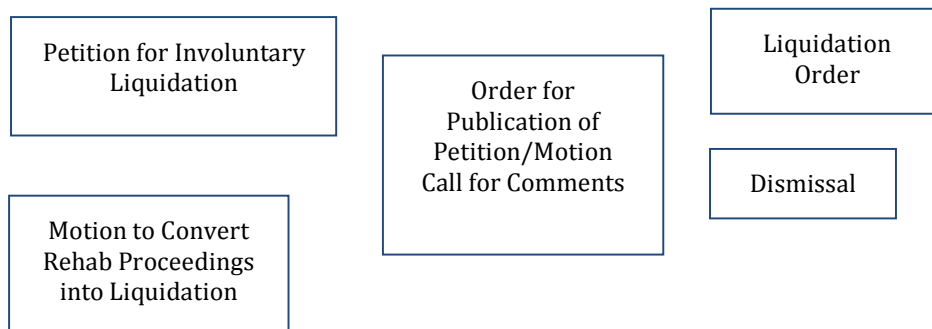
**PETITION FOR VOLUNTARY LIQUIDATION
OF INDIVIDUAL DEBTOR**



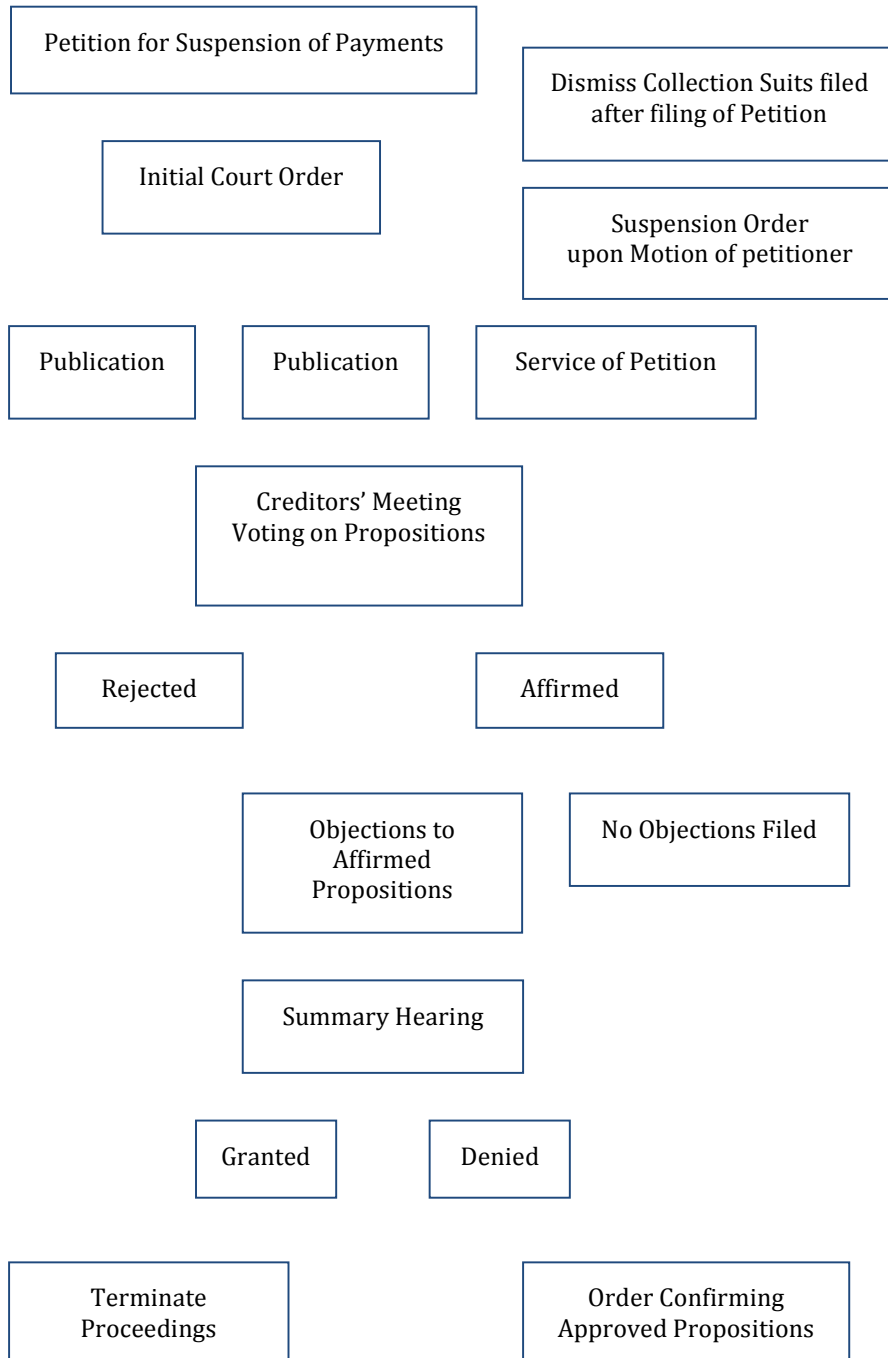
**PETITION FOR VOLUNTARY LIQUIDATION
OF JURIDICAL DEBTOR**



**PETITION FOR INVOLUNTARY LIQUIDATION
OF JURIDICAL DEBTOR**



PETITION FOR SUSPENSION OF PAYMENTS



OUT OF COURT OR INFORMAL AGREEMENTS OR REHABILITATION PLANS

Standstill Agreement
Notice to Creditors to
participate in talks

Publication

Standstill Agreement

- effective 15 days following publication
- with 120 days validity from effectivity date

Court – can dismiss case filed within period of
Validity of Standstill Agreement (120 days)

Out of Court or Informal
Agreements or
Rehabilitation Plans

Publication

Agreement or Rehab Plan
effective 15 days
following publication

Court - assistance in execution or
implementation

PART III

Court Issuances

COURT ISSUANCES

COURT SUPERVISED REHABILITATION PROCEEDINGS

Corrective Order

When issued

- 5 working days from filing of Petition for Rehabilitation

Contents

1. Amend or supplement the Petition; and/or
2. Submit such documents as may be necessary or proper to put the Petition in proper order

Commencement Order

When issued

1. Within 5 working days from filing of Petition (if Petition sufficient in form and substance); or
2. Within 5 working days reckoned from the date of filing of the amended or supplemented Petition or from the submission of such documents found necessary or proper to put the Petition in proper order

Contents

1. Identify the debtor, its principal business or activity(ies) and its principal place of business;
2. Summarize the grounds for initiating the proceedings;
3. State the relief sought under FRIA and any requirement or procedure particular to the relief sought;
4. State the legal effects of the Commencement Order, including those mentioned in Section 17;
5. Declare that the debtor is under rehabilitation;
6. Direct publication of the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first (1st) publication to be made within seven (7) days from time of its issuance;
7. If petitioner is the debtor – direct service by personal delivery of a copy of the Petition on each creditor holding at least ten percent (10%) of the total liabilities of the debtor as determined from the schedule attached to the Petition, within five (5) days;
If petitioner is a creditor – direct service by personal delivery of a copy of the Petition on the debtor, within five (5) days;
8. Appoint a Rehabilitation Receiver who may or may not be among the nominees of the petitioner;

9. Summarize the requirements and deadlines for creditors to establish their claims against the debtor and direct all creditors to file their claims with the Court at least five (5) days before the initial hearing;
10. Direct the Bureau of Internal Revenue (BIR) to file and serve on the debtor its Comment/Opposition to the Petition or its claims against the debtor;
11. Prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after issuance of the Commencement Order;
12. Authorize payment of administrative expenses as they become due;
13. Set the case for Initial Hearing – which should not be more than forty (40) days from date of filing of the Petition, for the purpose of determining whether there is a substantial likelihood for the debtor to be rehabilitated;
14. Make available copies of the Petition and Rehabilitation Plan for examination and copying by any interested party;
15. Indicate the location or locations at which documents regarding the debtor and the proceedings may be reviewed and copied;
16. State that any creditor or debtor who is not the petitioner may submit the name or nominate any other qualified person to the position of Rehabilitation Receiver at least five (5) days before the Initial Hearing;
17. Include a Stay or Suspension Order which shall
 - a. Suspend all actions or proceedings in Court or otherwise for enforcement of claims against the debtor;
 - b. Suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - c. Prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - d. Prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may provided in the FRIA;
18. Provision on Rehabilitation Receiver's acceptance of appointment, oath, bond and compensation;
19. Direct creditors and stakeholders to file questions to be posed to the debtor by the Court during the Initial Hearing with a deadline of at least five (5) days before the Initial Hearing for submission of such questions to the Court

Initial Hearing Order

Contents

1. Direct the creditors to comment on the Petition and the Rehabilitation Plan and to submit such Comments to the Court and the Rehabilitation Receiver within a period of not more than twenty (20) days from the Initial Hearing date; and
2. Direct the Rehabilitation Receiver to evaluate the financial condition of the debtor and to prepare and submit to the Court, within forty (40) days from

the Initial Hearing, his Report as required under Section 24

Other possible contents

1. Appoint new Rehabilitation Receiver following hearing and determination of objection(s) to the qualifications of the appointed Rehabilitation Receiver;
2. Reiterate compliance with directives in Commencement Order;
3. Direct that matters and/or issues raised in the Initial Hearing be addressed and the Rehabilitation Plan accordingly modified

Due Course Order

When Issued - within ten (10) days from receipt of the Report of the Rehabilitation Receiver

The Petition can be given due course upon a finding that

1. the debtor is insolvent; and
2. there is a substantial likelihood for the debtor to be successfully rehabilitated

Contents

1. Direct the Rehabilitation Receiver to review, revise and/or recommend action on the Rehabilitation Plan and submit the same or a new one to the Court within a period of not more than ninety (90) days;
2. Court may refer any dispute relating to the Rehabilitation Plan or rehabilitation proceedings pending before it to arbitration or other modes of dispute resolution, if same will resolve dispute more quickly, fairly and efficiently than the Court

Dismissal of Petition for Rehabilitation

When Issued - within ten (10) days from receipt of the Report of the Rehabilitation Receiver

The Petition should be dismissed upon a finding that

1. The debtor is not insolvent;
2. The Petition is a sham filing intended only to delay the enforcement of the rights of the creditor(s);
3. The Petition, the Rehabilitation Plan and the attachments thereto contain any materially false or misleading statements; or
4. The debtor has committed acts of misrepresentation or in fraud of its creditors(s) or a group of creditors

Court may, in its discretion order the petitioner to pay damages to any creditor or debtor who may have been injured by the filing of the Petition, to the extent of such injury

Confirmation of Rejected Rehabilitation Plan

When issued – upon notice of rejection of Rehabilitation Plan

The Court can confirm the Rehabilitation Plan even if rejected by the creditors if ALL of the following circumstances are present:

1. The Rehabilitation Plan complies with the requirements of FRIA;

2. The Rehabilitation Receiver recommends the confirmation of the Rehabilitation Plan;
3. The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
4. The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation

Notice of Approved Rehabilitation Plan

When issued - within five (5) days from receipt of the Rehabilitation Plan for confirmation

Contents

1. a Rehabilitation Plan has been submitted for confirmation;
2. any creditor may obtain copies of said Rehabilitation Plan; and
3. any creditor may file an Objection thereto within twenty (20) days from receipt of the Notice

Order for Hearing on Objections to Approved Rehabilitation Plan

When issued – after expiration of period within which to file Objections and there are actual Objections filed

Contents - set time and date for hearing or hearings on the Objections

Confirming the Approved Rehabilitation Plan

When issued – within 1 year from filing of Petition for Rehabilitation

Grounds

1. If there are no objections filed within the relevant period;
2. If objections are filed, but the Court
 - a. finds them lacking in merit;
 - b. determines that basis for objection has been cured; or
 - c. determines that the debtor complied with the Order to cure objections;
3. Court can confirm the Rehabilitation Plan even if there are unresolved disputes over claims if the Rehabilitation Receiver has made adequate provisions for paying such claims;
4. To avoid doubt, other contrary provisions notwithstanding – Court shall have power to approve or implement the Rehabilitation Plan despite lack of approval or objections from owners, partners or stockholders of insolvent debtor provided that the terms thereof are necessary to restore the financial well-being and viability of the insolvent debtor

Conversion of Rehabilitation Proceedings into one for Liquidation

Under Section 25(c) – Within 10 days from receipt of the Report of the Rehabilitation Receiver

Grounds

1. the debtor is insolvent; and

2. there is no substantial likelihood for the debtor to be successfully rehabilitated as determined in accordance with the Supreme Court Rules

Under Section 72 – if no Rehabilitation Plan is approved within 1 year from date of filing of the Petition

Under Section 75 – if the Rehabilitation proceeding is terminated due to failure of rehabilitation or dismissal of the Petition for reasons other than technical grounds

Under Section 90 – Debtor may file a Motion to convert rehabilitation proceedings into liquidation and seek immediate dissolution and termination of its corporate existence

Under Section 91 – Creditors may file a Motion in the Court where rehabilitation proceedings are pending to convert it into Liquidation proceedings and move for immediate Liquidation of the debtor; and

At any other time upon recommendation of the Rehabilitation Receiver that rehabilitation of debtor is not feasible

Discharging the Rehabilitation Receiver

When Issued

1. Following confirmation of Rehabilitation Plan
2. Following approval of his Final Report and Accounting (approval may be included in the Discharge Order)

Termination Order

When issued – upon motion by any stakeholder or the Rehabilitation Receiver

Grounds

1. successful implementation of the Rehabilitation Plan; or
2. failure of rehabilitation

Contents

1. Declare proceedings terminated;
2. Discharge Rehabilitation Receiver (if still on board), subject to submission of his Final Report and Accounting;
3. Lift the Stay/Commencement Order and any other Court order holding in abeyance any action for enforcement of a claim against the debtor;
4. If termination of proceedings is due to failure of rehabilitation or dismissal of Petition for reasons other than technical grounds, convert proceedings to one for liquidation

Breach or Failure of Rehabilitation Plan

When issued - upon motion of an affected party; following hearing on the matter

Contents

1. Direct that the breach be cured and/or remedied within a specified period of time, consistent with present regulation, law and best interest of creditors;
2. Allow the debtor or the Rehabilitation Receiver to submit amendments to the Rehabilitation Plan, approval of which shall be governed by the same requirements for approval of a Rehabilitation Plan;

3. Enforce applicable provisions of the Rehabilitation Plan through a writ of execution; and/or
4. Warn that failure to comply will prompt Court to convert proceedings into one for liquidation

PRE-NEGOTIATED REHABILITATION PLANS

Stay Order

When Issued - within 5 working days from filing of the Petition for Approval of the Pre-Negotiated Rehabilitation Plan

Contents

1. Identify the debtor, its principal business of activity/ies and its principal place of business;
2. Declare that the debtor is under rehabilitation;
3. Summarize the grounds for the filing of the petition;
4. Direct publication of the Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from time of issuance;
5. Direct service by personal delivery of a copy of the Petition on each creditor who is not a petitioner holding at least ten percent (10%) of the total liabilities of the debtor, as determined in the schedule attached to the Petition, within three (3) days;
6. State that copies of the Petition and the Pre-Negotiated Rehabilitation Plan are available for examination and copying by any interested party;
7. State that creditors and other interested parties opposing the Petition or appointed Rehabilitation Receiver may file their Objections or Comments thereto within a period not later than twenty (20) days from second publication of the Order;
8. Appoint a Rehabilitation Receiver, if provided for under the Pre-Negotiated Rehabilitation Plan; and
9. Include a Suspension or Stay Order as described in the FRIA, which shall
 - a. Suspend all actions or proceedings in Court or otherwise for enforcement of claims against the debtor;
 - b. Suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
 - c. Prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
 - d. Prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may provided in the FRIA

Approval of Pre-Negotiated Rehabilitation Plan

When issued

1. Within ten 20days from date of the second publication of the Stay Order (if there are no Objections filed within the period allowed)
2. Within a Maximum Period of 120 days from date of filing of the Petition

Order following Hearing on Objections

Contents

1. If Court finds merit in the Objection(s) – direct debtor, when feasible, to cure the defect within a reasonable period;
2. If Court determines that debtor or creditors supporting the Pre-Negotiated Rehabilitation Plan acted in bad faith or that the objection is not curable – may order conversion of proceedings into liquidation;
3. Find that the Objection(s) has/have no substantial merit or that the same has/have been cured; in which case, the Pre-Negotiated Rehabilitation Plan shall be deemed approved

SUSPENSION OF PAYMENTS

Initial Order in Petitions for Suspension of Payments

When Issued - within 5 working days from filing of the Petition, if Court finds same sufficient in form and substance

Contents

1. Call a meeting of all creditors named in the schedule of debts and liabilities not less than fifteen(15) days nor more than forty(40) days from date of such Order and designate the date, time and place of the meeting;
2. Direct creditors to prepare and present written evidence of their Claims before the scheduled creditors' meeting;
3. Direct publication of the Order in a newspaper of general circulation in the province or city where Petition filed once a week for 2 consecutive weeks, with the first publication to be made within (7) seven days from time of issuance of the Order;
4. Direct Clerk of Court to cause the sending of a copy of the Order by registered mail, postage prepaid, to all creditors named in the schedule of debts and liabilities;
5. Forbid the individual debtor from selling, transferring, encumbering or disposing in any manner of his property, except those used in the ordinary course of business in which he is engaged so long as proceedings relative to the suspension of payments is pending;
6. Prohibit individual debtors from making any payment outside of the necessary or legitimate expenses of his business, so long as the proceedings are pending; and
7. Appoint a Commissioner to preside over the creditors' meeting

Suspension Order

When issued - upon Motion by the debtor

Contents

- Suspend any Pending Execution against the Debtor;
- Qualify that it does not apply to properties held as security by secured creditors;
- Stress that the Suspension Order shall lapse
 1. When (3) three months shall have passed without proposed agreement being accepted by the creditors; or
 2. As soon as such proposed agreement is denied

Termination Order

When issued – If Proposed Agreement is rejected

Order Setting case for Hearing on Objections to Affirmed Proposed Agreement

When issued – upon receipt of Objections and determination that requirements for such Objections have been met

Confirming Approval of Proposed Agreement

When issued

1. When the majority decision to approve the proposed agreement or its amendment is upheld by the Court after considering the Objections raised by creditors; or
2. When no opposition or objection to said decision has been presented

Contents

1. Confirm the Approved Proposed Agreement; and
2. Direct that the Agreement be carried out and that all parties bound thereby must comply with its terms

LIQUIDATION OF INSOLVENT DEBTOR

Initial Order in Petitions for Involuntary Liquidation of Insolvent Juridical Debtor

When issued – If Court finds Petition sufficient in form and substance

Contents

1. Direct publication of the Petition or Motion in a newspaper of general circulation once a week for 2 consecutive weeks; and
2. Directing the debtor and all creditors who are not petitioners to file their Comments on the Petition or Motion within 15 days from the date of last publication

Initial Order in Petitions for Involuntary Liquidation of Insolvent Individual Debtor

When issued – upon filing of Petition

Contents

1. Set case for hearing on which date the individual debtor must show cause why he should not be adjudged an insolvent;
2. Upon good cause shown, forbid the individual debtor from making payments of any his debts and transferring any property belonging to him;
3. Fix the amount of the bond which must be filed by the petitioners and set the deadline for the filing thereof; and
4. Direct the petitioners to cause publication of the Order in a newspaper of general circulation in the Philippines once a week for at least 2 consecutive weeks

Order for the Taking of Property of the Insolvent Individual Debtor

When issued – following submission by Movant of the following:

1. Affidavit proving compliance with publication requirements; and
2. Bond in double the amount of their aggregate claims

Contents – Direct the Sheriff to

1. Take into his custody sufficient amount of property of the individual debtor to satisfy:
 - a. The demands of the petitioning creditors; and
 - b. Costs of proceedings;
2. Prepare, within 3 days from taking, a complete Inventory of the property so taken and file such Inventory with the Clerk of Court as soon as completed;
3. Prepare a Schedule of names and residences of the creditors and amounts due each from the individual debtor's books or from such other papers of the individual debtor that come into his possession and file this Schedule or List of Creditors with the Clerk of Court; and
4. Hold all such property taken by virtue of the Bond for the benefit of all creditors of the individual debtor whose claims shall be duly proved

Order setting case for Hearing on Challenges to the Bond

When issued – Upon filing of Challenges to the sufficiency of the Bond

Contents

1. Set case for hearing, with notice to person(s) excepting, of not less than two (2) nor more than five (5) days;
2. Direct the surety(ies) to justify the sufficiency of their bond to the Court;
3. Warn that if surety fails to justify, the Court will issue an Order vacating the Order to Take Property or denying the Appeal, as the case may be

Order for Property Taken to be Sold Under Execution

When issued – upon Motion of Petitioning Creditors and following hearing where it is satisfactorily show to the Court that interest of parties will be subserved by sale of property taken

Contents

1. Order sale of property in same manner as sale under execution;

2. Direct that the Proceeds of the sale be deposited in Court to abide by result of the proceedings

Liquidation Order

When issued

Under Section 90 – If the Court finds the Petition or Motion for Voluntary

Liquidation of Insolvent Juridical Debtor sufficient in form and substance

Under Section 91 – When Court determines that the Petition or Motion is meritorious, after considering the Comments filed

Under Section 104 – Within 5 working days, if the Court finds the Petition for Voluntary Liquidation of an Insolvent Individual Debtor sufficient in form and substance

Under Section 107 – When

1. The individual debtor shall default; or
2. If after trial, issues are found in favor of petitioners

Following Conversion of Rehabilitation Proceedings into one for Liquidation Contents

1. Declare debtor insolvent;
2. Order liquidation of debtor and, in case of a Juridical Debtor, declare it as dissolved;
3. Order the Sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
4. Order publication of the Petition or Motion in a newspaper of general circulation once a week for two (2) consecutive weeks;
5. Direct payment of any claims and conveyance of any property due the debtor to the liquidator;
6. Prohibit payments by the debtor and the transfer of any property by the debtor;
7. Direct all creditors to file their claims with the liquidator within the period set by the Rules of Procedure;
8. Authorize the payment of administrative expenses as they become due;
9. State that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of Liquidator; and
10. Set the case for hearing for the election and appointment of the Liquidator, which date shall not be less than thirty (30) days nor more than forty five (45) days from date of last publication

Appointment of Liquidator

When issued

1. Following election of the Liquidator in Open Court;
2. If no creditors attend on date set for election of the Liquidator;
3. If creditors who attend fail or refuse to elect a Liquidator;
4. If after being elected, the Liquidator fails to qualify; or
5. When a vacancy occurs for any reason whatsoever

Contents

1. Appoint Liquidator;
2. Require Liquidator to take an Oath and file a Bond in an amount fixed by the Court, which Bond shall be conditioned upon the proper and faithful discharge of his powers, duties and responsibilities;
3. Fix the compensation of the Liquidator; and
4. Set deadline for compliance by Liquidator of Oath and Bond requirements

Order Setting case for Hearing on Final Report and Accounting of the Liquidator

When issued – upon filing by Liquidator of his Final Report and Accounting

Discharge of the Liquidator

When Issued

1. For cause
2. Upon Motion of Liquidator, following submission of his Final Report and Accounting, which the Court finds in order

Exempting Property from Execution

When issued –

1. Upon Application of Individual Debtor for exemption of property from execution;
2. Following posting of Notices of the Application;
3. Following Hearing on the Application;

Contents

1. Exempt and set apart, for the use and benefit of the insolvent, such real and personal property exempt by law from execution and also a homestead;
2. Show compliance with the notice requirements

Ordering the SEC to Remove the Debtor from the Registry of Legal Entities

When issued - Upon determining that the Liquidation has been completed

Contents

1. Approve the Final Liquidation Report; and
2. Order the SEC to remove the Debtor from the Registry of Legal Entities

Termination Order

When issued - Upon receipt of evidence showing that the debtor has been removed from the registry of legal entities at the SEC

CROSS-BORDER INSOLVENCY PROCEEDINGS

Initial Order

When filed – upon Filing of Petition by a representative of the foreign entity that is the subject of foreign proceedings

Contents

1. Set the Petition for hearing; and
2. Suspend any action to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines;
3. Require the surrender of property of the foreign entity to the foreign representative; and/or
4. Provide other necessary relief

Additional Necessary Forms

Oath of the Rehabilitation Receiver and Liquidator

Minutes of the Creditors' Meeting in Suspension of Payment cases

Affirmed Propositions at Creditors' Meetings

Initial Hearing Questions

Timeline

PART IV

Significant Time Periods in FRIA cases

SIGNIFICANT TIME PERIODS IN COURT SUPERVISED REHABILITATION CASES

Corrective Order – 5 working days from filing of Petition

Commencement Order

1. Within 5 working days from filing of Petition (if Petition sufficient in form and substance); or
2. Within 5 working days reckoned from the date of filing of the amended or supplemented Petition or from the submission of such documents found necessary or proper to put the Petition in proper order

Publication of Commencement Order

- once a week for at least 2 consecutive weeks
- first (1st) publication to be made within 7 days from time of issuance of Commencement Order

Service by personal delivery of a copy of the Petition – within 5 days from issuance of Commencement Order

Filing of Claims by creditors - at least 5 days before the Initial Hearing

Submission of Nominations to position of Rehabilitation Receiver - at least 5 days before the Initial Hearing

Initial Hearing – Not more than 40 days from date of filing of the Petition

Preliminary Registry of Claims – within 20 days from assumption into office of Rehabilitation Receiver

Registry of Claims with Undisputed Claims – upon expiration of 30 day period for filing Opposition or Challenge of Claims

Opposition or Challenge of Claim(s) - within 30 days from expiration of the 20 day period to establish the Preliminary Registry of Claims

Filing of Comments to the Petition and Rehabilitation Plan - not more than 20 days from the Initial Hearing date

Rehabilitation Receiver's Report - within 40 days from the Initial Hearing

Court Action following submission of the Rehabilitation Receiver's Report - within 10 days from receipt of the Report

Submission of Modified Rehabilitation Plan by the Rehabilitation Receiver following issuance of Due Course Order of the Court - not more than 90 days from receipt of Due Course Order

Convening of Creditors by Rehabilitation Receiver - within 20 days from notification by Rehabilitation Receiver

Court Notice of Submission of Rehabilitation Plan for confirmation – within 5 days from receipt of the Rehabilitation Plan for confirmation

Filing of Objections to the Rehabilitation Plan submitted to the Court for confirmation - within 20 days from receipt of the Court Notice

Maximum Period to Confirm Rehabilitation Plan - 1 year from the date of filing of the Petition

SIGNIFICANT TIME PERIODS IN PRE-NEGOTIATED REHABILITATION PROCEEDINGS

Stay Order - within 5 working days from filing of the Petition

Publication of Stay Order

- once a week for at least 2 consecutive weeks
- first (1st) publication to be made within 7 days from time of issuance of Stay Order

Service by personal delivery of a copy of the Petition – 3 days from issuance of Stay Order

Filing of Objections or Comments to Petition and/or appointed Rehabilitation Receiver - not later than 20 days from second publication of the Stay Order

Court Approval of Pre-Negotiated Rehabilitation Plan if no Objections timely submitted – following 20 days from date of the second publication of the Stay Order

Hearing on Objections - not earlier than 20 days and not later than 30 days from date of the second publication of the Stay Order

Maximum Period to Approve Pre-Negotiated Rehabilitation Plan - 120 days from date of filing of the Petition

SIGNIFICANT TIME PERIODS IN OUT OF COURT OR INFORMAL AGREEMENTS OR REHABILITATION PLANS

Publication of Notice of Standstill Period agreed upon - once a week for 2 consecutive weeks

Standstill period – cannot exceed 120 days from date of effectivity

Publication of Agreement or Plan - once a week for at least 3 consecutive weeks

Effective date of Agreement or Plan – upon lapse of 15 days from date of required last publication of notice

SIGNIFICANT TIME PERIODS IN PETITIONS FOR LIQUIDATION

Publication of the Petition or Motion for Involuntary Liquidation - once a week for 2 consecutive weeks

Filing of Comments to the Petition or Motion - within 15 days from the date of last publication

SIGNIFICANT TIME PERIODS IN PETITIONS FOR SUSPENSION OF PAYMENTS

Initial Court Order - within 5 working days from filing of the Petition

Creditors' Meeting - not less than 15 days nor more than 40 days from date of Initial Court Order

Presentation of Written Evidence of Claims – before Creditors' Meeting

Publication of Initial Court Order

- once a week for at least 2 consecutive weeks
- first (1st) publication to be made within 7 days from time of issuance of Initial Court Order

Lapse of Suspension Order – following 3 months and the Proposed Agreement has not yet been accepted by the creditors; or as soon as Proposed Agreement is denied

Filing of Objections to Affirmed Proposed Agreement - within 10 days from date of the last creditors' meeting

SIGNIFICANT TIME PERIOD IN PETITIONS FOR VOLUNTARY LIQUIDATION

Liquidation Order - within five (5) working days from filing of Petition (if Court finds it sufficient in form and substance)

SIGNIFICANT TIME PERIODS IN PETITIONS FOR INVOLUNTARY LIQUIDATION

Publication of Initial Court Order - once a week for 2 consecutive weeks

Sheriff's Inventory of Property Taken - within 3 days from taking

Notice of Hearing on Challenges to the Bond - not less than 2 nor more than 5 days

SIGNIFICANT TIME PERIODS IN LIQUIDATION (Common Provisions)

Publication of Petition or Motion for Liquidation, as required by the Liquidation Order - once a week for two (2) consecutive weeks

Hearing for the election and appointment of the Liquidator - not less than 30 days nor more than 45 days from date of last publication

Declaration of Liquidator Re contracts of the debtor - within 90 days from date of his assumption of office

Disallowance of Foreclosure Proceedings – 180 days from issuance of Liquidation Order

Preliminary Registry of Claims – within 20 days from assumption into office of Liquidator

Registry of Claims with Undisputed Claims - upon expiration of 30 day period for filing challenges to the claims

Liquidation Plan - within 3 months from assumption into office of Liquidator
Posting of Notice of Hearing of Application for Exemption from Execution - at least
10 days prior to the hearing date

PART V

Jurisprudence on Rehabilitation

JURISPRUDENCE ON REHABILITATION

2012

San Jose Timber, et al. v. SEC, et al., G.R. No. 162196, 27 February 2012

- Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.
- Under the Rules of Procedure on Corporate Rehabilitation, “rehabilitation” is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.
- “A successful rehabilitation usually depends on two factors: (1) a positive change in the business fortunes of the debtor, and (2) the willingness of the creditors and shareholders to arrive at a compromise agreement on repayment burdens, extent of dilution, etc. The debtor must demonstrate by convincing and compelling evidence that these circumstances exist or are likely to exist by the time the debtor submits his ‘revised or substitute rehabilitation plan for the final approval of the court.’”
- Given the high standards that the Rules require, mere unsupported assertions by the debtor that “the parties are close to an agreement” or that “business is expected to pick up in the next several quarters” are not sufficient. Circumstances that might demonstrate in a convincing and compelling manner that the debtor could successfully be rehabilitated include the following:
 - a) the business fortunes of the debtor have actually improved since the petition was filed;
 - b) the general circumstances and forecast for the sector in which the debtor is operating supports the likelihood that the debtor's business will revive;
 - c) the debtor has taken concrete steps to improve its operating efficiency;
 - d) the debtor has obtained legally binding investment commitments from parties contingent on the approval of a rehabilitation plan;
 - e) the debtor has successfully addressed other factors that would increase the risk that the debtor's rehabilitation plan would fail;

- f) the majority of the secured and unsecured creditors have expressly demonstrated a preference that the debtor be rehabilitated rather than liquidated and are willing to compromise on their claims to reach that result;
- g) the debtor's shareholders have expressed a willingness to dilute their equity in connection with a debt equity swap.
- Supreme Court ordered remand of case to SEC to give petitioner a second chance to recover and pay off its creditors after an indispensable element for its possible rehabilitation became a reality

BPI v. Hong, et al., G.R. No. 161771, 15 February 2012

- While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts
- This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.

Advent Capital and Finance Corporation v. Alcantara, G.R. No. 183050, 25 January 2012

- Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."
- Here, Advent Capital's claim is disputed and requires a full trial on the merits. It must be resolved in a separate action where the Alcantaras' claim and defenses may also be presented and heard. Advent Capital cannot say that the filing of a separate action would defeat the purpose of corporate rehabilitation. In the first place, the Interim Rules do not exempt a company under rehabilitation from availing of proper legal procedure for collecting debt that may be due it. Secondly, Court records show that Advent Capital

- had in fact sought to recover one of its assets by filing a separate action for *replevin* involving a car that was registered in its name.
- Advent Capital must file a separate action for collection to recover the trust fees that it allegedly earned and, with the trial court's authorization if warranted, put the money in escrow for payment to whoever it rightly belongs. Having failed to collect the trust fees at the end of each calendar quarter as stated in the contract, all it had against the Alcantaras was a claim for payment which is a proper subject for an ordinary action for collection. It cannot enforce its money claim by simply filing a motion in the rehabilitation case for delivery of money belonging to the Alcantaras but in the possession of a third party.

2011

Siochi Fishery Enterprises, Inc., et al. v. Bank of the Philippine Islands, G.R. No. 193872, 19 October 2011

- The Interim Rules of Procedure while construed liberally, cannot be disregarded
Court found that the most glaring procedural infirmity committed by the court is its failure to refer respondent corporations' petition for rehabilitation and Rehabilitation Plan to the rehabilitation receiver despite the explicit and clear mandate of the Interim Rules
- It is discernible from the foregoing that there are serious matters which should be determined before rehabilitation may be had. For this reason, the Interim Rules required the appointment of a rehabilitation receiver simultaneously with the issuance of the Stay Order and prescribed the following qualifications -- expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor, knowledge in management, finance, and rehabilitation of distressed companies, and general familiarity with the rights of creditors in rehabilitation, etc. to further emphasize the significance of the role of the rehabilitation receiver in rehabilitation proceedings, the Interim Rules directed the rehabilitation receiver to evaluate the rehabilitation plan and submit his recommendations to the court. In fact, his recommendation bears much weight as it is one of the factors which must be considered by the court if it were to approve the rehabilitation plan. More importantly, it must be emphasized that the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors. Thus, the court a quo committed serious error when it failed to refer the petition for rehabilitation and its annexes to the appointed receiver.
- As an officer of the court and an expert, the rehabilitation receiver plays an important role in corporate rehabilitation proceedings. In *Pryce Corporation*

v. Court of Appeals, the Court held that, "the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors."

- Enumerated the powers and functions of the Rehabilitation Receiver
- Enumerated the essential requisites of a Rehabilitation Plan
- Outlined why the Rehabilitation Plan should not have been approved – no liquidation plan, debtor corporation does not own all the properties some of which were owned by its officers, lack of operational plan or definite management which would bring about growth and expansion in their internal operations, failure to give the specific details regarding their prospective investors who will supposedly put up additional fresh capital

Molina v. Pacific Plans, Inc., G.R. No. 165476, 15 August 2011

- Reiterated rule that labor claims and proceedings are covered by Stay Order and must be suspended pending rehabilitation proceedings

Advent Capital and Finance Corporation v. Young, G.R. No. 183018, 3 August 2011

- Advent's contention that returning the subject car to Young would constitute a violation of the stay order issued by the rehabilitation court is untenable. As the Court of Appeals correctly concluded, returning the seized vehicle to Young is not an enforcement of a claim against Advent which must be suspended by virtue of the stay order issued by the rehabilitation court pursuant to Section 6 of the Interim Rules on Corporate Rehabilitation (Interim Rules). The issue in the replevin case is who has better right to possession of the car, and it was Advent that claimed a better right in filing the replevin case against Young. In defense, Young claimed a better right to possession of the car arising from Advent's car plan to its executives, which he asserts entitles him to offset the value of the car against the proceeds of his retirement pay and stock option plan.
- Young cannot collect a money "claim" against Advent within the contemplation of the Interim Rules. The term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid by the company under rehabilitation to its creditors. In the replevin case, Young cannot demand that Advent pay him money because such payment, even if valid, has been "stayed" by order of the rehabilitation court. However, in the replevin case, Young can raise Advent's car plan, coupled with his retirement pay and stock option plan, as giving him a better right to possession of the car. To repeat, Young is entitled to recover the subject car as a necessary consequence of the dismissal of the replevin case for failure to prosecute without prejudice.

BPI Family Savings Bank, Inc. v. Pryce Gases, Inc., et al., G.R. No. 188365, 29 June 2011

- Under Section 1, Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation, the proceedings shall be summary and non-adversarial in nature and a motion for new trial or reconsideration is a prohibited pleading. Hence, in view of the failure of BFB to perfect its appeal and its subsequent filing of a motion for reconsideration which is a prohibited pleading, the 10 October 2003 Order of the RTC, Branch 138, approving the rehabilitation plan had become final and executory.

Umale v. ASB Realty Corporation, G.R. No. 181126, 15 June 2011

- Being placed under corporate rehabilitation and having a receiver appointed to carry out the rehabilitation plan do not *ipso facto* deprive a corporation and its corporate officers of the power to recover its unlawfully detained property.
- Corporate rehabilitation is defined as "the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan more if the corporation continues as a going concern than if it is immediately liquidated." It was first introduced in the Philippine legal system through PD 902-A, as amended. The intention of the law is "to effect a feasible and viable rehabilitation by *preserving* a floundering business as a *going concern*, because the assets of a business are often more valuable *when so maintained* than they would be when liquidated." This concept of preserving the corporation's business as a going concern while it is undergoing rehabilitation is called debtor-in-possession or debtor-in-place. This means that the debtor corporation (the corporation undergoing rehabilitation), through its Board of Directors and corporate officers, remains in control of its business and properties, subject only to the monitoring of the appointed rehabilitation receiver. The concept of debtor-in-possession, is carried out more particularly in the SEC Rules, the rule that is relevant to the instant case. It states therein that the interim rehabilitation receiver of the debtor corporation "does not take over the control and management of the debtor corporation." Likewise, the rehabilitation receiver that will replace the interim receiver is tasked only to monitor the successful implementation of the rehabilitation plan. There is nothing in the concept of corporate rehabilitation that would *ipso facto* deprive the Board of Directors and corporate officers of a debtor corporation, such as ASB Realty, of control such

- that it can no longer enforce its right to recover its property from an errant lessee.
- To be sure, corporate rehabilitation imposes several restrictions on the debtor corporation. The rules enumerate the prohibited corporate actions and transactions (most of which involve some kind of disposition or encumbrance of the corporation's assets) during the pendency of the rehabilitation proceedings but none of which touch on the debtor corporation's right to sue. The implication therefore is that our concept of rehabilitation does not restrict this particular power, save for the caveat that all its actions are monitored closely by the receiver, who can seek an annulment of any prohibited or anomalous transaction or agreement entered into by the officers of the debtor corporation.

Majority Stockholders of Ruby Industrial Corporation v. Lim, G.R. No. 165887, 6 June 2011

- Cited the FRIA as giving jurisdiction to RTC over liquidation proceedings following a failure of rehabilitation proceedings
- Liquidation held out as the only hope of the minority stockholders for effecting an orderly and equitable settlement of RUBY's obligations, and compelling the majority stockholders to account for all funds, properties and documents in their possession, and make full disclosure on the nullified credit assignments
- *Liquidation*, or the settlement of the affairs of the corporation, consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts. It involves the winding up of the affairs of the corporation, which means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any, among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests.
- It cannot be denied that with the current divisiveness, distrust and antagonism between the majority and minority stockholders, the long agony and extreme prejudice caused by numerous litigations to the creditors, and the bleak prospects for business recovery in the light of problems with the local government which are implementing more restrictions and anti-pollution measures that practically banned the operation of RUBY's glass plant - liquidation becomes the only viable course for RUBY to stave off any further losses and dissipation of its assets. Liquidation would also ensure an orderly and equitable settlement of *all* creditors of RUBY, both secured and unsecured.

JAPRL Development Corp., et al. v. Security Bank Corporation, G.R. No. 190107, 6 June 2011

- Limson and Arollado, as sureties, whose liability is solidary cannot. therefore, claim protection from the rehabilitation court, they not being the financially-distressed corporation that may be restored, not to mention that the rehabilitation court has no jurisdiction over them. Article 1216 of the Civil Code clearly is not on their side:
ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against any one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected, (underscoring supplied)
- IN FINE, SBC can pursue its claim against Limson and Arollado despite the pendency of JAPRL's petition for rehabilitation. For, by the CSA in favor of SBC, it is the obligation of the sureties, who are therein stated to be solidary with JAPRL. to see to it that JAPRL's debt is fully paid.

Asiatrust Development Bank v. First Aikka Development, Inc., et al., G.R. No. 179558, 1 June 2011

- Consolidation of the petitions involving two separate entities was found not proper
- Although FADI and UDI have interlocking directors, owners, and officers and intertwined loans, the two corporations are separate, each with a personality distinct from the other. To be sure, in determining the feasibility of rehabilitation, the court evaluates the assets and liabilities of each of these corporations separately and not jointly with other corporations. Moreover, Section 2, Rule 3 of the Rules, the rule applicable at the time of the filing of the petition, provides:
Sec. 2. *Venue*. - Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located.
Considering that UDI's principal office is located in Pasig City, the petition should have been filed with the RTC in Pasig City and not in Baguio City. The latter court cannot, therefore, take cognizance of the rehabilitation petition insofar as UDI is concerned for lack of jurisdiction.
This error, however, will not result in the dismissal of the entire petition since the RTC of Baguio City had jurisdiction over the petition of FADI in accordance with the above-quoted provision of the Rules.
- RTC found to have gravely abused its discretion when it refused to grant the motion to admit the opposition belatedly filed by petitioner, even as the factual circumstances of the case require that the Rules be liberally construed in the interest of justice

- Even if Rehabilitation Plan already approved and partially implemented, case was remanded to the trial Court to allow the Bank whose belated Comment was not admitted to participate in the proceedings
- The Court promulgated the Rules in order to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations. These Rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. To be sure, strict compliance with the rules of procedure is essential to the administration of justice. Nonetheless, technical rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Otherwise stated, strict application of technical rules of procedure should be shunned when they hinder rather than promote substantial justice.
- Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan, more if the corporation continues as a going concern than if it is immediately liquidated.
- Rehabilitation proceedings in our jurisdiction have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The purpose of rehabilitation proceedings is to enable the company to gain a new Lease on life and thereby allow creditors to be paid their claims from its earnings.
- Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money and lend out the same. Banks, therefore, redistribute wealth in the economy by channeling idle savings to profitable investments. Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.

Samuel U. Lee, et al. vs. Bangkok Bank Public Company, Limited, G.R. No. 173349, February 9, 2011

- In *Chung Ka Bio v. Intermediate Appellate Court*, this Court resolved in the negative the issue of whether private individuals can file with the SEC

petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited to “corporations, partnerships or associations.” Besides, We pointed out that the SEC, being a mere administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a co-petitioner. We have said time and again that the SEC’s “jurisdiction is limited only to corporations and corporate assets;” it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation’s officers or sureties. We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*, *Modern Paper Products, Inc. v. Court of Appeals*, and *Union Bank of the Philippines v. Court of Appeals*.

- Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties.
- Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments.
- Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties.

Jose Marcel Panlilio, et al. vs. Regional Trial Court, et al., People of the Philippines and Social Security System, G.R. No. 173846, 2 February 2011

- Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to

restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings

- A principal feature of corporate rehabilitation is the suspension of claims against the distressed corporation.
- The rehabilitation of SIHI and the settlement of claims against the corporation is not a legal ground for the extinction of petitioners' criminal liabilities. There is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. As correctly observed in *Rosario*, it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.
- The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court. The penal sanctions as a consequence of violation of the SSS law, in relation to the revised penal code can therefore be implemented if petitioners are found guilty after trial. However, any civil indemnity awarded as a result of their conviction would be subject to the stay order issued by the rehabilitation court. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch or body where there are pending actions for claims against the distressed corporation.
- Congress has recently enacted Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010. Section 18 thereof explicitly provides that criminal actions against the individual officer of a corporation are not subject to the Stay or Suspension Order in rehabilitation proceedings.

De Castro v. Liberty Broadcasting Network, Inc. and Edgardo Quiogue, G.R. No. 165153, 25 August 2010

- NLRC directed to suspend execution of SC Decision until the Stay Order is lifted or the corporate rehabilitation proceedings are terminated

China Banking Corporation v. Cebu Printing and Packaging Corporation, G.R. No. 172880, 11 August 2010

- It must be remembered that the trial court has the authority to dismiss a petition for rehabilitation after hearing, or even after due consideration of the pleadings filed before it. This is in accord with the trial court's authority to give due course to the petition or not under Rule 4, Section 9 of the Interim Rules. The trial court, acting in its capacity as a commercial court, has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon. It is no different than that of administrative departments and, as such, its findings of fact are generally accorded respect, if not finality.

Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation, G.R. No. 168672, 8 August 2010

- Applying *RCBC v. IAC* in this case, since the foreclosure of respondent DNG's mortgage and the issuance of the certificate of sale in petitioner EPCIB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, after the redemption period expired without respondent redeeming the foreclosed property, petitioner becomes the absolute owner of the property and it was within its right to ask for the consolidation of title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property.

North Bulacan Corporation v. Philippine Bank of Communications, G.R. No. 183140, 2 August 2010

- The Court enacted the Interim Rules of Procedure on Corporate Rehabilitation to provide a remedy for summary and non-adversarial rehabilitation proceedings of distressed but viable corporations. The intent is

consistent with the commercial nature of rehabilitation, which seeks to expedite its resolution for the benefit, not only of the petitioner-corporation, but of all the parties involved and the economy in general. These rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. The parties may not, however, invoke such liberality if it will result in the utter disregard of the rules or cause needless delay in the administration of justice.

- Violations of several rules on corporate rehabilitation found –
 - In contravention of Rule 3, Section 1 on prohibited pleadings, NBC filed motions for extension and a memorandum
 - filed various pleadings ignoring the requirement under the Rules that these be verified by the affiants
 - motions for indirect contempt also not verified
 - Schedule of Debts and Liabilities did not show the creditors' addresses and, although it reflected the principal amount of each debt, nowhere did it state the amount of accrued interests, the penalties, the nature of the obligation, and any pledge, lien, mortgage judgment, or other security given for the debt
 - Inventory of Assets failed to state the nature of its assets, their location and condition
 - did not disclose the encumbrances, liens, or claims on its properties and the identities as well as the addresses of the lien holders or claimants
- Largely because of NBC's numerous prohibited pleadings, nearly a year had passed since the petition's initial hearing on February 15, 2007 and still the RTC had not approved a rehabilitation plan for the company. Under the Rehabilitation Rules, if upon the lapse of 180 days from the date of the initial hearing there is still no approved rehabilitation plan, the RTC must dismiss the petition.
- Argument that the RTC could not have committed grave abuse of discretion in extending the 180-day period since the rules allowed such an extension provided it was not to exceed 18 months from the filing of the petition rejected since such an extension is allowed only if there appeared to be convincing and compelling evidence that the debtor-corporation can be successfully rehabilitated

Castillo v. Uniwide Warehouse Club, Inc./or Jimmy Gow, G.R. No. 169725, 30 April 2010

- In *Finasia Investments and Finance Corporation v. Court of Appeals*, the term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid. It was referred to, in *Arranza v. B.F. Homes, Inc.*, as an action involving monetary considerations and in *Philippine Airlines v. Kurangking*, the term was identified as the right to

- payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. Furthermore, the actions that were suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. More importantly, the new rules on corporate rehabilitation, as well as the interim rules, provide an all-encompassing definition of the term and, thus, include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. There is no doubt that petitioner's claim in this case, arising as it does from his alleged illegal dismissal, is a claim covered by the suspension order issued by the SEC, as it is one for pecuniary consideration.
- Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC*, the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos. Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.
 - The reason behind the imperative nature of a suspension or stay order in relation to the creditors' claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.
 - At this juncture, it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival,

excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.

- It is, thus, not difficult to see why the subject action for illegal dismissal and damages against respondent corporation ought to have been suspended at the first instance respondents submitted before the Labor Arbiter their motion to suspend proceedings in the illegal dismissal case. This, considering that at the time the labor case was filed on August 26, 2002, respondent corporation was undergoing proceedings for rehabilitation and was later on declared to be in a state of suspension of payments.

2009

Tiango and Manego v. Uniwide Sales Warehouse Club, Inc. and Jimmy Gow, G.R. No. 168697, 14 December 2009

- Reiterated rule that Labor Claims are covered by Stay Order

Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc., G.R. No. 178768 and 180893, 25 November 2009

- The rehabilitation plan was contested on the ground that the same was unreasonable and results in the impairment of the obligations of contract. The following stipulations in the rehabilitation plan was contested: fifty percent (50%) reduction of the principal obligation; condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service.
- SC found nothing onerous in the terms of the rehabilitation plan.
- The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest.
- SC found enlightening the following observation of the CA in this regard: There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court *a quo*, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor.

- SC also rejected the contention that there is a violation of the impairment clause.
- Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked. Furthermore, as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.
- Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.
- SC also did not find the Rehabilitation court as having erred when it allowed the foreclosure of the property of the accommodation mortgagor and excluded the same from the coverage of the stay order
- The newly adopted Rules of Procedure on Corporate Rehabilitation has a specific provision for this special arrangement among a debtor, its creditor and its accommodation mortgagor. Section 7(b), Rule 3 of the said Rules explicitly allows the foreclosure by a creditor of a property not belonging to a debtor under corporate rehabilitation, as it provides:
SEC. 7. Stay Order.-- x x x (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; *provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation*; provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor[.]

Abrera, et al. v. Barza, G.R. No. 171681, 11 September 2009

- Rehabilitation Proceedings held to be available remedy to Pre-need corporations like CAP
- Under the Interim Rules, "debtor" shall mean "any corporation, partnership, or association, whether supervised or regulated by the Securities and Exchange Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules.
- The Interim Rules does not distinguish whether a pre-need corporation like CAP cannot file a petition for rehabilitation before the RTC. Courts are not authorized to distinguish where the Interim Rules makes no distinction.
- Moreover, under the Interim Rules, "claim" shall include "all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise." "Creditor" shall mean "any holder of a claim."
- Hence, the claim of petitioners for payment of tuition fees from CAP is included in the definition of "claims" under the Interim Rules.
- Claims of planholders included under scope of Stay Order
- Note that under the FRIA, Pre-Need Companies are already exempted from its coverage

Malayan Insurance Company, Inc. v. Victorias Milling Company, Inc., G.R. No. 167768, 17 April 2009

- SC rejected petitioner's argument that since its claim (for reimbursement of the amount it released to NLRC to satisfy the judgment on the labor claims of Abelido) arose after the respondent was placed under a management committee, such claim should not be suspended nor covered by the SEC Stay Order
- The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. Otherwise stated, what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims. Furthermore, the actions that are suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.
- If we allow the reimbursement action to proceed, and if petitioner's claim is granted, it would be in a position to assert a preference over other creditors. Worse, respondent would be compelled to dispose of its properties in order to satisfy the claim of petitioner. It would in effect be a clear defiance of the proscription set forth in the *Interim Rules* on "selling, encumbering, transferring, or disposing in any manner any of its (respondent's) properties except in the ordinary course of business." Certainly, petitioner's claim for reimbursement did not arise from the usual operations of respondent's

business. Neither can we consider it as an ordinary expense for the conduct of its operations.

Philippine National Bank and Equitable PCI Bank v. Court of Appeals, et al., G.R. No. 165571, 20 January 2009

- Argument that a petition for rehabilitation and suspension of payments cannot be filed without previously filing a petition for suspension of payments was rejected by the Supreme Court
- The period mentioned under Sec. 3-12, "longer than one year from the filing of the petition," does not refer to a year-long waiting period when the SEC can finally say that the ailing corporation is technically insolvent to qualify for rehabilitation. The period referred to the corporation's inability to pay its obligations; when such inability extends beyond one year, the corporation is considered technically insolvent. Said inability may be established from the start by way of a petition for rehabilitation, or it may be proved during the proceedings for suspension of payments, if the latter was the first remedy chosen by the ailing corporation. If the corporation opts for a direct petition for rehabilitation on the ground of technical insolvency, it should show in its petition and later prove during the proceedings that it will not be able to meet its obligations for longer than one year from the filing of the petition.
- A petition for rehabilitation may be filed by a corporation for being technically insolvent
- Adopted the *Metropolitan Bank & Trust Company* ruling in G.R. No. 166197 in rejecting the argument that approval of the Rehabilitation Plan violated the right against non-impairment of contracts
- Holds out that creditors are not forced to accept the terms of the Rehabilitation Plan which are merely proposals for the creditors to accept
- The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the general public.

Philippine Airlines, Inc. v. Court of Appeals and Sabine Koschinger, G.R. NO. 150592, 20 January 2009

- Under the *Interim Rules of Procedure on Corporate Rehabilitation*, a claim shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

- The definition is all-encompassing as it refers to *all* actions whether for money or otherwise. There are no distinctions or exemptions.
- The reason for the suspension of claims while the corporation undergoes rehabilitation proceedings has been explained by the Court, thus:
In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. *Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.*
- Under the *Interim Rules of Procedure on Corporate Rehabilitation*, a stay order defers all actions or claims against the corporation seeking rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings.

2008

China Banking Corporation v. ASB Realty Corp., et al., G.R. No. 172192, 23 December 2008

- Upheld the rulings *Metropolitan Bank & Trust Company v. ASB Holdings, Inc. and Bank of the Philippine Islands v. Securities and Exchange Commission*, which both involved the rehabilitation plan of ASB Development Corporation
- In intruding into corporate affairs, the State must, at all times, promote a wider and more meaningful equitable distribution of wealth and protect investments and the public. To Our mind, the approval by the SEC of the rehabilitation plan of respondent corporations is a step towards that direction.
- The terms of the rehabilitation plan unveil that secured creditors like petitioner bank may refuse or reject the *dacion en pago* arrangements stated in it. It cannot be implemented without petitioner's consent.
- Further, the approval of the plan and the appointment of a receiver merely suspend actions and claims that may be raised against respondent bank. They do not, in any manner, obliterate petitioner's status as a preferred secured creditor.

- Questions on the viability of the plan should likewise be laid to rest. As the CA aptly observed, majority of respondents' obligations to creditor banks had already been paid as early as two years upon the approval of the plan.

Negros Navigation v. Court of Appeals, et al., G.R. No. 163156, 10 December 2008

- Admiralty proceeding was appropriately suspended in accordance with Section 6 of the Interim Rules on Corporate Rehabilitation
- Stay Order applies even to maritime liens
- The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.
- It is undisputed that THI holds a preferred maritime lien over NNC's assets by virtue of THI's unpaid services. The issuance of the stay order by the rehabilitation court does not impair or in any way diminish THI's preferred status as a creditor of NNC. The enforcement of its claim through court action was merely suspended to give way to the speedy and effective rehabilitation of the distressed shipping company. Upon termination of the rehabilitation proceedings or in the event of the bankruptcy and consequent dissolution of the company, THI can still enforce its preferred claim upon NNC.
- The Manila RTC acting as a rehabilitation court merely suspended the proceedings in the admiralty case in the Cebu RTC. It did not divest the Cebu RTC of its jurisdiction over the maritime claims of THI against NNC. The preferred maritime lien of THI can still be enforced upon the termination of the rehabilitation proceedings, or if it such be unsuccessful, upon the dissolution of the corporation.

Rosario v. Co, G.R. No. 133608, 26 August 2008

- The filing of the case for violation of B.P. Blg. 22 is not a "claim" that can be enjoined within the purview of P.D. No. 902-A

Union Bank v. ASB Dev. Corp., G.R. No. 172895, 30 July 2008

- As a technically insolvent corporation, respondent can seek recourse from the SEC through a Petition for Rehabilitation
- Stay Order suspends foreclosure proceedings as well

Consuelo Metal Corp. v. Planters Dev. Bank, G.R. No. 152580, 26 June 2008

- The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver or upon the issuance of a stay order by the trial court.
- the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.

Philippine Islands Corporation for Tourism Dev., Inc. v. Victorias Milling Company, Inc., G.R. No. 167674, 17 June 2008

- The purpose for the suspension of the proceedings is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the “rescue” of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation
- We are not persuaded by PICTD’s argument that it should be exempt from the suspension order because it is a secured creditor. Unlike the provisions in the Insolvency Law which exempts secured creditors from the suspensive effect of the order issued by the court in an ordinary suspension of payments proceedings, the provisions of P.D. No. 902-A, when it comes to the appointment of a management committee or a rehabilitation receiver, do not contain an exemption for secured creditors.

Banco De Oro v. JAPRL Development Corp., G.R. No. 179901, 14 April 2008

- Under the Interim Rules of Procedure on Corporate Rehabilitation, a stay order defers all actions or claims against the corporation seeking

rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings

- A creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation
- The protective remedy of rehabilitation was never intended to be a refuge of a debtor guilty of fraud.

Rombe v. Asiatrust, G.R. No. 164479, 13 February 2008

- There is no interference by one co-equal court with another when the case filed in one involves corporate rehabilitation and suspension of extrajudicial foreclosure in the other
- The rehabilitation case is distinct and dissimilar from the annulment of foreclosure case in that the first case is a special proceeding while the second is a civil action.
- A civil action is one by which a party sues another for the enforcement or protection of a right or the prevention or redress of a wrong. Strictly speaking, it is only in civil actions that one speaks of a cause of action. A cause of action is defined as the act or omission by which a party violates a right of another. Thus, in the annulment of foreclosure case, the cause of action of Rombe is the act of Asiatrust in foreclosing the mortgage on Rombe's properties by which the latter's right to the properties was allegedly violated.
- On the other hand, the rehabilitation case is treated as a special proceeding. Initially, there was a difference in opinion as to what is the nature of a petition for rehabilitation. The Court, on September 4, 2001, issued a Resolution in A.M. No. 00-8-10-SC to clarify the ambiguity, thus:
On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.
- Thus, a petition for rehabilitation need not state a cause of action and, hence, Rombe's contention that the two cases have distinct causes of action is incorrect.

Pryce Corp. v. CA, G.R. No. 172302, 4 February 2008

- In determining whether petitioner's financial situation is serious and whether there is a clear and imminent danger that it will lose its corporate assets, the RTC, acting as commercial court, should conduct a hearing wherein both parties can present their respective evidence
- In the case at bench, when the commercial court appointed a rehabilitation receiver, the very next day after the filing of the Petition for Rehabilitation, it is highly doubtful and well-nigh impossible, that, without any hearing yet held, the commercial court could have already gathered enough evidence before it to determine whether there was any imminent danger of dissipation of assets or of paralization of business operations to warrant the appointment of a rehabilitation receiver

2007

BPI v. SEC, G.R. No. 164641, 20 December 2007

- Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The rationale of P.D. No. 902-A, as amended, is to "effect a feasible and viable rehabilitation," by preserving a foundering business as going concern, because the assets of a business are often more valuable when so maintained than they would be when liquidated.
- approval of the Rehabilitation Plan did not impair BPI's right to contract. As correctly contended by private respondents, the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC, through the hearing panel that heard the petition for approval of the Rehabilitation Plan, was acting as a quasi-judicial body and thus, its order approving the plan cannot constitute an impairment of the right and the freedom to contract.
- no element of compulsion in the *dacion en pago* provision of the Rehabilitation Plan which allows alternatives if creditor does not agree to dacion
- secured creditors will not lose its status as a secured creditor, retaining its preference over unsecured creditors when the assets of the corporation are finally liquidated

Leca Realty Corp. v. Manuela Corp., G.R. No. 166800, 25 September 2007

- there is nothing in Section 5 (c) of P.D. No. 902-A authorizing the change or modification of contracts entered into by the distressed corporation and its creditors.
- the change of its rate in the Rehabilitation Plan is not justified as it impairs the rental rate stipulation between the parties
- Administrative expenses are costs associated with the general administration of an organization and include such items as utilities, rents, salaries, postages, furniture, and housekeeping charges

Metrobank v. SLGT Holdings, G.R. No. 175181-2, 14 September 2007

- The Court is very much aware of A.M. No. 00-8-10-SC or the *Interim Rules on Corporate Rehabilitation* which defines the term “claim” as including all claims or demands of whatever character against a debtor or its property, whether for money or otherwise. But as aptly explained by the CA, Section 24 of the interim rules limits the coverage of the *Rules* on rehabilitation and consequently the rule of suspension of action to those who stand in the category of debtors and creditors. The relationship between the petitioner banks, as mortgagor of the ASB property, on one hand, and respondents SLGT and Dylanco, as unit buyers, on the other, cannot be that of a debtor-creditor as to bring the case within the purview of the rules on corporate recovery, let alone the *Sobrejuanite* case. Then, too, the vinculum that binds SLGT/Dylanco, as unit buyers and as suitors before the HLURB, and ASB is far from being akin to that of debtor-creditor. As it were, SLGT/Dylanco sued ASB for having constituted, in breach of PD 957, a mortgage on the condominium project without prior HLURB approval and so much as notifying them of the loan release for which reason they prayed for the delivery of their units free from all liens and encumbrances. With the view we take of the case, the complaint of individual respondents is not in the nature of “claims” that should be covered by the suspensive effect of a rehabilitation proceeding.

Union Bank v. Concepcion, G.R. No. 160727, 26 June 2007

- Albeit jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed, during the period material, ample power under P.D. No. 902-A, as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in the state of suspension of payments in the two instances provided in Section 5(d) thereof. Said Section 5(d) vests the SEC with exclusive and original jurisdiction over petitions for suspension of payments which may either be: (a) a simple petition for suspension of payments based on the provisions of

the Insolvency Law, *i.e.*, the petitioning corporation has sufficient assets to cover all its debts, but foresees the impossibility of meeting the obligations as they fall due, or (b) a similar petition filed by an insolvent corporation accompanied by a prayer for the creation of a management committee and/or rehabilitation receiver based on the provisions of P.D. No. 902-A, as amended by P.D. No. 1758.

PAL v. PALEA, G.R. No. 142399, 19 June 2007

- Action for labor claims also suspended by Stay Order

Viva Footwear v. SEC, G.R. No. 163235, 27 April 2007

- Rehabilitation Plan found not viable; petition denied due course
- Grounds - based on petitioner's performance for the last three years, petitioner appears to be not financially sound; audited financial statements for the same period do not reflect the company's true financial condition - petitioner will appear insolvent and financially unsound; bulk of current assets consists of inventories and supplies averaging about 86% of the total current assets. This casts doubt on the marketability of the company's merchandise especially when it starts to operate beyond the present 20% working capacity; existing fixed assets appear to be fully depreciated; has just started producing Ethyl Vinyl Acetate (EVA) sheets and has yet to show proof of its share in the market and profitability

Metrobank v. ASB, G.R. No. 166197, 27 February 2007

- secured creditor's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the enforcement of such preference is suspended. The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.
- No compulsion to accept dacion en pago provision which must be with assent of creditor
- various companies/corporations can file a *Petition For Rehabilitation*
- The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This

is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the public. The approval of the Rehabilitation Plan by the SEC Hearing Panel, affirmed by both the SEC *En Banc* and the Court of Appeals, is precisely in furtherance of the rationale behind P.D. No. 902-A, as amended, which is "to effect a feasible and viable rehabilitation" of ailing corporations which affect the public welfare.

New Frontier Sugar Corp. v. RTC, Branch 39, Iloilo City, G.R. No. 165001, 31 January 2007

- Presently, the applicable law on rehabilitation petitions is the Interim Rules of Procedure Governing Corporate Rehabilitation
- Stay Order is effective both against secure and unsecured creditors
- suspension of the enforcement of all claims against the corporation is subject to the rule that it shall commence only from the time the Rehabilitation Receiver is appointed
- CA was correct in upholding the RTC's dismissal of the petition for rehabilitation in view of the fact that the titles to petitioner's properties have already passed on to respondent bank and petitioner has no more assets to speak of, specially since petitioner does not dispute the fact that the properties which were foreclosed by respondent bank comprise the bulk, if not the entirety, of its assets.
- It should be stressed that the Interim Rules was enacted to provide for a summary and non-adversarial rehabilitation proceedings. This is in consonance with the commercial nature of a rehabilitation case, which is aimed to be resolved expeditiously for the benefit of all the parties concerned and the economy in general.
- petition for rehabilitation did not run its full course but was dismissed by the RTC after due consideration of the pleadings filed before it. On this score, the RTC cannot be faulted for its summary dismissal, as it is tantamount to a finding that there is no merit to the petition. This is in accord with the trial court's authority to give due course to the petition or not under Rule 4, Section 9 of the Interim Rules. Letting the petition go through the process only to be dismissed later on because there are no assets to be conserved will not only defeat the reason for the rules but will also be a waste of the trial court's time and resources.
- A.M. No. 04-9-07-SC on September 14, 2004, clarifying the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies. It is provided therein that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the CA through a petition for

review under Rule 43 of the Rules of Court to be filed within fifteen (15) days from notice of the decision or final order of the RTC

Lingkod Manggagawa sa Rubberworld v. Rubberworld Phils. Inc., G.R. No. 153882, 29 January 2007

- Labor claims are suspended by Stay Order

2005

Sobrejuanite v. ASB Dev. Corp., G.R. No. 165675, 30 September 2005

- Action for rescission of the contract and refund of payments made to realty company before HLURB also suspended by Stay Order
- The interim rules define a *claim* as referring to *all* claims or demands, of *whatever nature or character* against a debtor or its property, whether *for money or otherwise*. The definition is all-encompassing as it refers to *all* actions whether for money or otherwise. There are no distinctions or exemptions

Ong v. PCIB, G.R. No. 160466, 17 January 2005

- right to collect payment from the surety exists independently of its right to proceed directly against the principal debtor. In fact, the creditor bank may go against the surety alone without prior demand for payment on the principal debtor
- jurisdiction of rehab court is limited only to corporations and corporate assets. It has no jurisdiction over the properties of BMC's officers or sureties.

2004

MWSS v. Daway, G.R. No. 160732, 21 June 2004

- except when a letter of credit specifically stipulates otherwise, the obligation of the banks issuing letters of credit are solidary with that of the person or entity requesting for its issuance, the same being a direct, primary, absolute and definite undertaking to pay the beneficiary upon the presentation of the set of documents required therein

- Being a solidary obligation, the letter of credit is excluded from the jurisdiction of the rehabilitation court
- Sec. 5, Rule 3 of the Interim Rules would preclude any other effective remedy questioning the orders of the rehabilitation court since they are immediately executory and a petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court.” In this situation, it had no other remedy but to seek recourse to us through this petition for *certiorari*

2003

Chas Realty v. Talavera, G.R. No. 151925, 6 February 2003

- Rule 4, Section 2(k), distinctly provides that, *first*, under letter (a), the filing of the petition has been duly authorized; and, *second*, under letter (b), the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness, alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholder’s rights.
- if any extraordinary corporate action (mentioned in Rule 4, Section 2(k), of the Interim Rules on Corporate Rehabilitation) are to be done under the proposed rehabilitation plan, the petitioner would be bound to make it known that it has received the approval of a majority of the directors and the affirmative votes of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the corporation. Where no such extraordinary corporate acts (or one that under the law would call for a two-thirds (2/3) vote) are contemplated to be done in carrying out the proposed rehabilitation plan, then the approval of stockholders would only be by a majority, not necessarily a two-thirds (2/3), vote, as long as, of course, there is a quorum
- nowhere is it stated that the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding stock is invariably necessary for the filing of a petition for rehabilitation regardless of the corporate action that the plan envisions. Just to the contrary, it only requires in the filing of the petition that the corporate actions therein proposed have been duly approved or consented to by the directors and stockholders “in consonance with existing laws.” The requirement is designed to avoid a situation where a rehabilitation plan, after being developed and judicially sanctioned, cannot ultimately be seen through because of the refusal of directors or stockholders to cooperate in the full implementation of the plan. In fine, a certification on

the approval of stockholders is required but the question, whether such approval should be by a majority or by a two-thirds (2/3) vote of the outstanding capital stock, would depend on the existing law *vis-à-vis* the corporate act or acts proposed to be done in the rehabilitation of the distressed corporation.

2001

Veteran's Bank Employees Union v. Vega, G.R. No. 105364, 28 June 2001

- Liquidation, in corporation law, connotes a winding up or settling with creditors and debtors. It is the winding up of a corporation so that assets are distributed to those entitled to receive them. It is the process of reducing assets to cash, discharging liabilities and dividing surplus or loss.
- On the opposite end of the spectrum is rehabilitation which connotes a reopening or reorganization. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.
- It is crystal clear that the concept of liquidation is diametrically opposed or contrary to the concept of rehabilitation, such that both cannot be undertaken at the same time. To allow the liquidation proceedings to continue would seriously hinder the rehabilitation of the subject bank.

ANNEX B: SENTENCING GUIDELINES

FINAL DRAFT SUBMITTED FOR THE APPROVAL OF THE PHILJA

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<i>Arresto Mayor</i> minimum (1m 1d to 2m) to <i>Arresto Mayor</i> medium (2m 1d to 4m) and Fine	Other Forms of Swindling (Art. 316) Theft (Art. 309 par. 6) Other mischiefs (Art. 329 par. 2) Reckless Imprudence(less grave felony) (Art. 365)	11
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<p><i>Arresto Menor</i> or Fine (Php10 – Php100)</p>	<p>Slight Physical Injuries (Art. 266, par. 1)</p> <p>Theft (Art. 309 par. 7)</p> <p>Resistance and disobedience to a person in authority or its agents (Art. 151)</p> <p>Tumults and other disturbances of public order (Art. 153 par. 5)</p> <p>Alarms & Scandals (Art.155)</p>	22

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CIRCUMSTANCES THAT AFFECT CRIMINAL LIABILITY

Mitigating Circumstances (Art. 13, RPC)
Those mentioned in Article 12 of the RPC, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant [Art. 13 (1)]
Offender is under eighteen year of age or over seventy years [Art. 13 (2)]
Lack of intention to commit so grave a wrong as that committed [Art. 13 (3)]
Sufficient provocation or threat on the part of the offended party immediately preceded the act [Art. 13 (4)]
Act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees [Art. 13 (5)]
Passion or obfuscation [Art. 13 (6)]
Voluntary surrender or voluntary confession [Art. 13 (7)]
Offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings [Art. 13 (8)]
Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts [Art. 13 (9)]
Other analogous circumstances [Art. 13 (10)]

Aggravating Circumstances (Art. 14, RPC)
Taking advantage of public position [Art. 14 (1)]
Crime was committed in contempt or with insult to the public authorities [Art. 14 (2)]
Act was committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that act was committed in the dwelling of the offended party, if the latter has not given provocation [Art. 14 (3)]
Abuse of confidence or obvious ungratefulness [Art. 14 (4)]
Crime was committed in the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship [Art. 14 (5)]
Crime was committed in the night time, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense [Art. 14 (6)]
Crime was committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune [Art. 14 (7)]
Crime was committed with the aid of armed men or persons who insure or afford impunity [Art. 14 (8)]
Accused is a recidivist [Art. 14 (9)] (<i>A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC</i>)
Offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty [Art. 14 (10)]

Aggravating Circumstances (Art. 14, RPC)	
	Crime was committed in consideration of a price, reward, or promise [Art. 14 (11)]
	Crime was committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin [Art. 14 (12)]
	Act was committed with evident premeditation [Art. 14 (13)]
	Craft, fraud, or disguise was employed [Art. 14 (14)]
	Advantage was taken of superior strength, or means were employed to weaken the defense [Art. 14 (15)]
	Act was committed with treachery (alevosia) [Art. 14 (16)] <i>(There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.)</i>
	Means were employed or circumstances brought about which add ignominy to the natural effects of the act [Art. 14 (17)]
	Crime was committed after an unlawful entry [Art. 14 (18)] <i>(There is an unlawful entry when an entrance is effected by a way not intended for the purpose.)</i>
	A wall, roof, floor, door, or window was broken as a means to the commission of a crime [Art. 14 (19)]
	Crime was committed with the aid of persons under fifteen years of age or by means of motor vehicles, motorized watercraft, airships, or other similar means [Art. 14 (20)]
	The wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission [Art. 14 (21)]

Alternative Circumstances (Art. 15, RPC)	
Relationship.	<i>The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.</i>
Intoxication.	<i>The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.</i>
	Degree of instruction and education of the offender.

Stages of Execution	
Consummated felony	All the elements necessary for its execution and accomplishment are present (Article 6, RPC).
Frustrated felony	When the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator (Article 6, RPC).

Stages of Execution	
Attempted felony	When the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance (Article 6, RPC).

Degree of Participation	
Principals	<ol style="list-style-type: none"> 1. Those who take a direct part in the execution of the act; 2. Those who directly force or induce others to commit it; 3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished. (Art. 17, RPC)
Accomplice	Those persons who, not being principals, cooperate in the execution of the offense by previous or simultaneous acts. (Art. 18, RPC)
Accessory	<p>Those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:</p> <ol style="list-style-type: none"> 1. By profiting themselves or assisting the offender to profit by the effects of the crime. 2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery. 3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime. (Art. 19, RPC)

RULES ON APPLICATION OF PENALTIES UNDER THE RPC
How to penalize offenders based on degree of participation

DEGREE OF PARTICIPATION	STAGE OF EXECUTION	PENALTY
Principal	Consummated felony	as prescribed by law (Art. 46, RPC)
Principal	Frustrated felony	next lower in degree than that prescribed for the principal in a consummated felony (Art. 50, RPC)
Principal	Attempted felony	two degrees lower than that prescribed for the principal in a consummated felony (Art. 51, RPC)
Accomplice	Consummated felony	next lower in degree than that prescribed for the principal in a consummated felony (Art. 52, RPC)
Accomplice	Frustrated felony	next lower in degree than that prescribed for the principal in a frustrated felony (Art. 54, RPC)
Accomplice	Attempted felony	next lower in degree than that prescribed for the principal in an attempted felony (Art. 56, RPC)
Accessory	Consummated felony	lower by two degrees than that prescribed for the principal in a consummated felony (Art. 53, RPC)
Accessory	Frustrated felony	lower by two degrees than that prescribed for the principal in a frustrated felony (Art. 55, RPC)
Accessory	Attempted felony	lower by two degrees than that prescribed for the principal in an attempted felony (Art. 57, RPC)
OTHER RULES		
Additional penalty to be imposed upon certain accessories	Accessories falling within the terms of Article 19 (3) of the RPC who should act with abuse of their public functions	Additional penalty of: (i) absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, (ii) absolute temporary disqualification if the principal offender shall be guilty of a less grave felony. (Art. 58, RPC)
Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible		Arresto mayor or a fine from 200 to 500 pesos (The court shall consider the social danger and the degree of criminality shown by the offender) (Art. 59, RPC)
Exceptions to the rules established in articles 50 to 57 of the RPC		Cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories (Art. 60, RPC)

RULES FOR GRADUATING PENALTIES UNDER THE RPC

How to find the penalty next lower in degree

NATURE OF PENALTY	PENALTY NEXT LOWER IN DEGREE
Single and indivisible penalty (e.g., Death, Reclusion Perpetua)	Penalty immediately following in the graduated scale in Art. 71 of the RPC
Two indivisible penalties or one or more divisible penalties to full extent (e.g., (1) From Reclusion Perpetua to Death; (2) From Arresto Menor to Arresto Mayor)	Penalty immediately following the lower/lowest penalty in the graduated scale in Art. 71 of the RPC
One or two indivisible AND maximum of a divisible penalty (e.g., From Reclusion Temporal Maximum to Reclusion Perpetua)	Medium and minimum of the divisible penalty AND maximum of penalty immediately following in the graduated scale in Art. 71 of the RPC
Several periods of different divisible penalties (e.g., From Arresto Mayor Medium to Prision Correccional Minimum)	Period immediately following the minimum prescribed and the next two following, either of the penalty prescribed or the one immediately following in the graduated scale in Art. 71 of the RPC
Others	Courts proceed by analogy.

RULES ON APPLICATION OF PENALTIES

How mitigating and aggravating circumstances increase or decrease the penalty under the RPC

NATURE OF CIRCUMSTANCE	EFFECT ON PENALTY
Special Aggravating Circumstance*	Penalty is imposed in the maximum regardless of mitigating circumstances. (Article 62, RPC).
Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor.	Circumstance shall not be taken into account for the purpose of increasing the penalty. (Article 62 (1), RPC).
Aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.	Circumstance shall not be taken into account for the purpose of increasing the penalty. (Article 62 (2), RPC).
Habitual delinquency (Note: For the purpose of this provision, a	(a) upon 3rd conviction : penalty prescribed for last crime + <i>prision correccional</i> medium and maximum

NATURE OF CIRCUMSTANCE	EFFECT ON PENALTY
person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, he is found guilty of any of said crimes a third time or oftener.)	(b) upon 4th conviction : penalty for last crime + <i>prision mayor</i> minimum and medium (c) upon 5th or additional conviction : penalty for last crime + <i>prision mayor</i> maximum to <i>reclusion temporal</i> minimum (Article 62 (5), RPC).
Examples of Special Aggravating Circumstances: Taking advantage of one's public position (People v. Amadeo Acaya, GR No. 108381, March 7, 2000) Aggravating circumstance which in themselves constitute a crime e.g., robbery with homicide (People v. Joel Gonzales, et al., GR No. 142932, May 29, 2002) Aggravating circumstance inherent in the crime, eg., abuse of superior strength in parricide where wife is the victim (People v. Ronnie Mactal, GR No. 141187, April 28, 2003)	

APPLICATION ON PENALTIES	
NATURE OF PENALTY	HOW APPLIED
Single indivisible penalty	Single indivisible penalty shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. (Article 63, RPC). Note: Even if two or more ordinary mitigating circumstances are present, the penalty cannot go one degree lower EXCEPT if there exists a privileged mitigating circumstance. (Art. 69, RPC)
Two indivisible penalties	(a) 1 Aggravating » greater penalty (b) no Aggravating or Mitigating » lesser penalty (c) 1 Mitigating » lesser penalty (d) Aggravating and Mitigating » offset (Article 63, RPC).
Penalties with three periods	1. No Aggravating or Mitigating » medium period 2. 1 Mitigating » minimum period 3. 1 Aggravating » maximum period 4. Mitigating and Aggravating » offset 5. 2 or more Mitigating and no Aggravating » penalty next lower 6. Regardless of number of Aggravating » penalty prescribed in its maximum 7. Within each period » courts must determine extent (Article 64, RPC).

APPLICATION ON PENALTIES	
Penalty not composed of three periods	Courts shall apply the rules contained in Article 64 of the RPC, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions. (Article 65, RPC).

TABLE OF DIVISIBLE PENALTIES (Article 27, RPC)		
PENALTY	PERIOD	DURATION
Reclusion Temporal	Penalty in its entirety	12 years and 1 day to 20 years.
Reclusion Temporal	Minimum	12 years and 1 day to 14 years and 8 months
	Medium	14 years, 8 months and 1 day to 17 years and 4 months
	Maximum	17 years, 4 months, 1 day to 20 years
Prision Mayor, absolute disqualification and special temporary disqualification	Penalty in its entirety	6 years and 1 day to 12 years.
Prision Mayor, absolute disqualification and special temporary disqualification	Minimum	6 years and 1 day to 8 years
	Medium	8 years and 1 day to 10 years
	Maximum	10 years and 1 day to 12 years
Prision correccional, suspension and destierro	Penalty in its entirety	6 months and 1 day to 6 years
Prision correccional, suspension and destierro	Minimum	6 months and 1 day to 2 years and 4 months
	Medium	2 years, 4 months and 1 day to 4 years and 2 months
	Maximum	4 years, 2 months and 1 day to 6 years
Arresto Mayor	Penalty in its entirety	1 month and 1 day to 6 months
Arresto Mayor	Minimum	1 to 2 months
	Medium	2 months and 1 day to 4 months
	Maximum	4 months and 1 day to 6 months
Arresto Menor	Penalty in its entirety	1 to 30 days
Arresto Menor	Minimum	1 to 10 days

TABLE OF DIVISIBLE PENALTIES (Article 27, RPC)		
PENALTY	PERIOD	DURATION
Arresto Menor	Medium	11 to 20 days
Arresto Menor	Maximum	21 to 30 days

FIXING THE MINIMUM AND MAXIMUM UNDER THE ISL (Act No. 4103)
Applicable to offenses under the RPC and Special Laws

Note: No ISL for indivisible penalties EXCEPT if converted to a divisible penalty because of a Privileged Mitigating Circumstance.

Exclusions from ISL (Section 2, Act No. 4103):

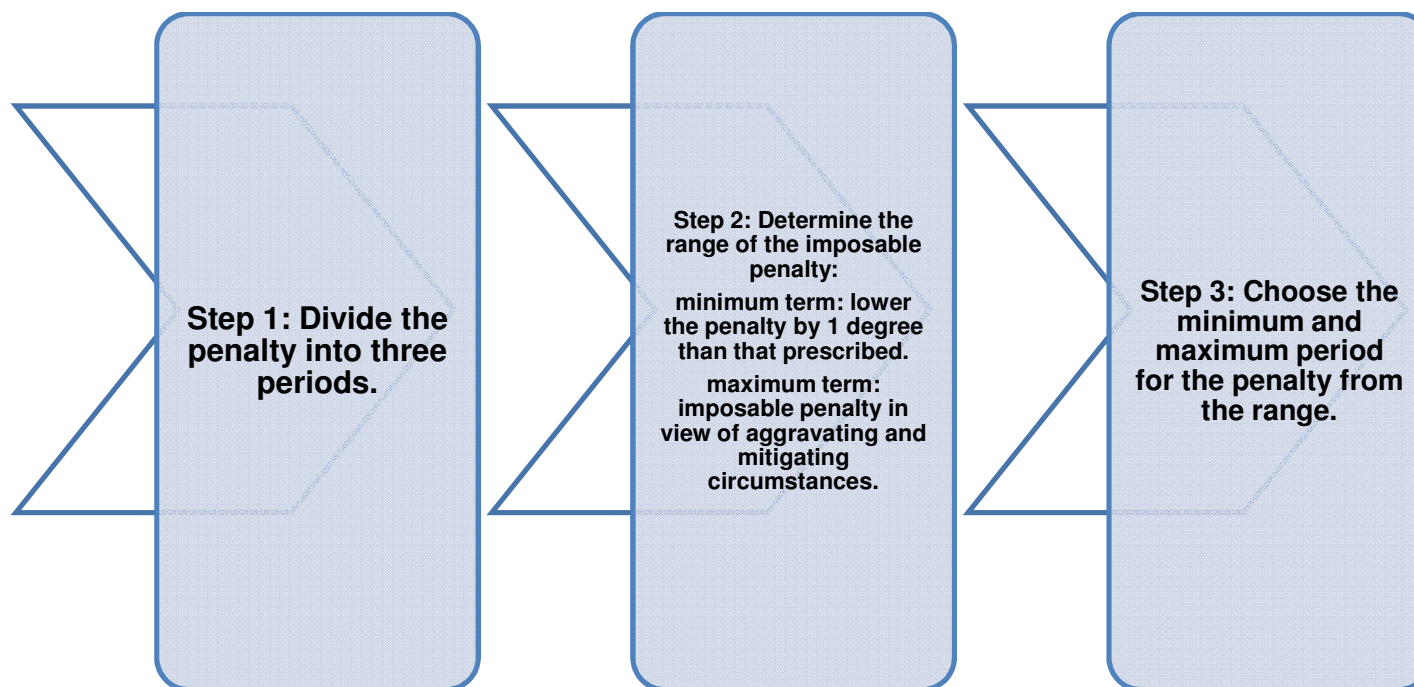
1. Persons convicted of offenses punishable with death or life imprisonment;
2. Persons convicted of treason, conspiracy or proposal to commit treason, misprision of treason, rebellion, sedition or espionage, piracy;
3. Habitual delinquents;
4. Persons who have escaped from confinement or evaded service of sentence;
5. Persons who have violated the terms of the Chief Executive's conditional pardon;
6. Persons already sentenced by final judgment upon approval of the ISL; and,
7. Persons convicted whose maximum term of imprisonment does not exceed one year.

MINIMUM AND MAXIMUM UNDER THE ISL (SECTION 1, ACT NO. 4103)		
	Minimum	Maximum
Revised Penal Code	penalty next lower to that prescribed in the RPC	as prescribed in the RPC
Special Laws	not less than as prescribed in the Special Law	not exceed maximum as prescribed in the Special Law

COMPUTATION OF PENALTIES UNDER SPECIAL LAWS

- 1) If the special law imposes a penalty prescribed or taken from the penalties found in the RPC, or if the provisions of the RPC are adopted in the special law as supplementary, the computation of what penalty to impose shall be done as under the RPC.
- 2) If the special law imposes a penalty not prescribed or taken from the penalties in the RPC, or if the provisions of the RPC are not adopted to supplement the special law, no computation based on the RPC can be done. What remains to be done by the courts is to apply the ISL, by finding the minimum and maximum of the prescribed penalty under the special law.

COMPUTATION OF PENALTIES UNDER THE RPC



ILLUSTRATIVE EXAMPLES

Step 1: Divide the penalty into three periods.

(1) The following penalties are divisible: Arresto Menor, Arresto Mayor, Prision Correccional, Prision Mayor, and Reclusion Temporal. For the duration of each, please refer to the table on pages ix-x and Article 27 of the RPC.

(2) The following penalties are indivisible: Death and Reclusion Perpetua. They cannot be divided but if imposed together, each can form a period, and if imposed with a third penalty (a divisible penalty, whether in whole or a period thereof), each can form a period to make three separate periods.

Examples:

PRISION MAYOR	
Minimum	6y 1d to 8y
Medium	8y 1d to 10y
Maximum	10y 1d to 12y

RECLUSION TEMPORAL TO DEATH	
Minimum	Reclusion Temporal
Medium	Reclusion Perpetua
Maximum	Death

Step 2: Determine the range of imposable penalty.

First: Find the minimum imposable term by lowering the penalty by 1 degree than that prescribed for the offense.

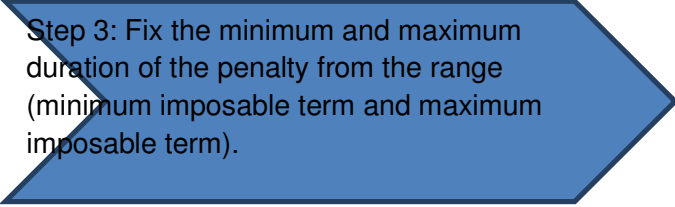
Examples:

PENALTY	1 DEGREE LOWER
Prision Mayor (a divisible penalty in its entirety)	Prision Correccional
Prision Mayor Medium (a period of a divisible penalty)	Prision Mayor Minimum
Arresto Mayor to Prision Mayor (3 divisible penalties)	Arresto Menor
Arresto Mayor and Prision Correccional (2 divisible penalties in their entirety)	Arresto Menor
Death (single indivisible penalty)	Reclusion Perpetua
Reclusion Perpetua to Death (2 indivisible penalties)	Reclusion Temporal
Reclusion Temporal to Death (2 indivisible penalties and a divisible penalty)	Prision Mayor
Reclusion Temporal Maximum to Death (2 indivisible penalties and the maximum of a divisible penalty)	Prision Mayor Maximum to Reclusion Temporal Medium
Prision Mayor Medium to Reclusion Temporal Minimum (several periods of different divisible penalties)	Prision Correccional Medium to Prision Mayor Minimum

Second: Find the maximum imposable term based on the presence and number of mitigating and aggravating circumstances that attended the commission of the offense.

Example:

For Reclusion Temporal where there are no mitigating and no aggravating circumstances, the maximum imposable term is Reclusion Temporal medium.



Step 3: Fix the minimum and maximum duration of the penalty from the range (minimum imposable term and maximum imposable term).

Example:

Penalty prescribed is Reclusion Temporal with no aggravating and no mitigating circumstances:

Minimum Term: Prision Mayor

Maximum Term: Reclusion Temporal Medium

Penalty imposed: 8y 1d of PM as minimum up to 15y of RT as maximum

CHECKLIST TO AID IN THE COMPUTATION OF PENALTIES

Offense accused is sentenced for (list if more than one)

Degree of participation (principal, accomplice, accessory)

Level of consummation (consummated, frustrated, attempted)

Presence of Mitigating and/or Aggravating Circumstances

Prior Criminal Record*

Prior Criminal Diversion/Probation/Parole Record*

ANNEX C

FINAL DRAFT SUBMITTED
FOR THE APPROVAL OF THE DOJ

Organizational Development Interventions in the Department of Justice (DOJ) Internal Affairs Unit (IAU) Operations

February 2013

This report was prepared by Josephine Vistro, Organizational Development Specialist, upon consultation with the members of the Internal Affairs Unit, Technical Working Group of the DOJ and made possible by the generous support of the American people through the United States Agency for International Development (USAID) with assistance from ABA ROLI. This report will be submitted to the IAU TWG for its final approval and submission to the Office of the Secretary. The contents of this report and any views expressed herein do not necessarily reflect the views of USAID, the United States Government or the ABA ROLI.

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I. Project Background and Goals

Steadfast in its desire to uphold the highest ethical standards within its organization, the Department of Justice (DOJ) understands that the successful operation of the Internal Affairs Unit (IAU) is a critical component in continuously strengthening the Department's integrity programs. For this reason, assistance was sought from the American Bar Association Rule of Law Initiative (ABA-ROLI)², in general, on the assessment of the current state-of-affairs of the IAUs, and on the determination of programs necessary to aid the units in better performing their functions.

Previously, the DOJ launched a program involving the formulation of a code of conduct that would govern all prosecutors and support staff in the National Prosecution Service. To implement the Code, the Department subsequently created the Internal Affairs Unit (IAU) through Department Order No. 768 issued on August 11, 2011. The Department Order identified the particular personnel designated to compose each of the IAUs.

The IAU has the two (2) primary tasks of:

1. Formulating policies, programs and procedures to ensure a sustainable system for exacting strict compliance of the Code of Conduct for all Department of Justice employees regarding the civil service and public accountability; and,
2. Investigating and prosecuting all administrative complaints filed by private or public individuals against any DOJ employees.

The IAU is constructed with a regional structure where each region is responsible for the investigation and prosecution of allegations within their area. In addition to IAU offices in each of the fourteen (14) Regional Prosecution Offices, the central office of the Department of Justice has a specific unit each for The Office of the Secretary and Office of the Prosecutor General. To guide them in their mandate, the IAUs were provided with procedural guidelines outlined in Section III of the Code of Conduct, entitled "Procedure in the Handling of Complaints before the Internal Affairs Unit".

II. Organizational Development Interventions

A. Initial Assessment

To establish a more solid basis for any ensuing interventions IAU current operational procedures were studied. A survey questionnaire was developed and distributed to all IAU offices. IAUs in the regional offices completed the questionnaire. In addition to the survey questionnaire circulated, interviews of IAU-Region 3, IAU-Region 7, IAU-Region 11, and IAU-OSEC were conducted to obtain more substantive information on the current state-of-affairs of the IAUs at large.

The survey, interviews, and review of available IAU-related materials disclosed the following:

1. The IAUs were in varying levels of implementation. Of the twelve IAUs which participated in the survey, two had started operations in the first quarter of 2011 and have handled one to twelve complaints as of the time of the survey in June 2012. Five others commenced in the third to fourth quarter of 2011 having handled one to four cases, while two IAUs have

started handling complaints only in the first quarter of 2012. Still others have not started operating as of the survey time.

2. Although the Code of Conduct provided a general guideline on IAU proceedings, each IAU region developed and followed different procedures in processing complaints based on its own appreciation of the provisions of the Code. Additionally, each used different documentation formats for recording and reporting their respective processes.
3. Outlined below are the IAU policies and procedures that require further clarification than what is articulated in the Code:
 - a. The processing of a complaint that is both criminal and administrative in nature.
 - b. The determination of the proper IAU (i.e., whether IAU-ORP, IAU-PG, or IAU-OSEC) that must have the jurisdiction over complaints filed against IAU members.
 - c. The procedure on processing a complaint being filed in the wrong jurisdiction.
 - d. The number of copies of complaints and supports to be required of the complainant
 - e. The procedure for non-compliant submissions.
 - f. The procedure for processing anonymous complaints.
 - g. Extent of performance of investigative work with respect to anonymous complaints.
 - h. The methodology for assigning complaints to IAU members for evaluation and resolution.
 - i. The process for addressing requests for inhibition of the IAU chairperson and/or IAU members.
 - j. The grounds for the inhibition of IAU chairperson and/or IAU members.
 - k. The time required to assign received complaints to IAU members for evaluation.
 - l. How to distinguish preliminary conference from preliminary investigation.
 - m. Criteria for considering a complaint as not actionable.
 - n. The procedure when there are irreconcilable disagreements on the resolution of a complaint.
 - o. The guidelines on designating the venue of preliminary conference.
 - p. The documents required for a preliminary investigation.
 - q. The process for docketing a formal charge.
 - r. The policy and procedure when the respondent resigns prior to the filing of formal charge.
 - s. The policy and procedure when the respondent resigns after the filing of formal charge.
 - t. The policy and procedure when the complainant withdraws the complaint.
 - u. The policy and procedure to designate the hearing officer in a formal administrative hearing.
 - v. The policy and procedure to designate the prosecuting officer in a formal administrative hearing.
 - w. The policy and procedure to determine the office responsible for resolving motions for reconsideration.

- x. The turnaround time for the final resolution of complaints at the levels of the Regional Prosecutor, Prosecutor General, and Secretary of Justice.
 - y. The policy and procedure for addressing security risks, as a result of back-and-forth conveyance of case records among case handlers located in different offices.
4. In addition to the abovementioned procedural and policy considerations, below outlines other areas for the Department's consideration to enhance performance.
- a. Ultimate slowdown in the process due to the re-centralization of approvals at the Office of Secretary, such as with respect to the filing of formal charges, and the resolution of complaint against prosecutors and non-regional support staff
 - b. Insufficient training on the Code of Conduct and its implementation, body of laws, rules, and regulations underlying the code.
 - c. Insufficient programs to increase awareness of the Code within and outside of the Department of Justice.
 - d. Lack of a monitoring and reporting system for tracking IAU progress and performance.
 - e. Shortage in staff to administratively support IAU operations.
 - f. Limited resources and capability to undertake investigation.
 - g. Lack of guidelines on confidentiality of information.
 - h. Undefined source of funding to sustain IAU operational requirements, such as for travel, supplies, etc.
 - i. Absence of an authoritative basis/department order for the adoption and implementation of the Code of Conduct.
 - j. Absence of an oversight mechanism , e.g., component outside of the DOJ, to ensure compliance with integrity.

B. Business Process Enhancement

While the foregoing assessment identified many potential areas for improvement, it was determined that the technical working group should focus on improving the capacities of the IAUs by establishing a streamlined process that could be uniformly adopted. Thus, process enhancements affecting the administration of IAU complaints were devised from initial guideline provisions in the Code of Conduct. The purpose is to standardize implementation procedures.

With input from the IAU Technical Working Group and other stakeholders, an enhanced business process was developed taking into consideration the solutions to issues identified in the initial assessment phase which embodies mechanisms for improved risk management, planning, monitoring and evaluation. This enhanced process for managing administrative complaints has six major components: Receiving, Assignment, Evaluation, Investigation, Resolution and Reconsideration. The Investigation process is divided into three sub-processes: Preliminary Conference, Preliminary Investigation, and Formal Investigation. Each process is presented diagrammatically, with specific policies applying to the process and a set of relatively

detailed procedures with personnel responsibility; the documentation requirement; the action documents produced by an activity; and the workflow.

Please refer to Annex 2 for the detailed Flowchart of the Enhanced Business Process for Handling Administrative Complaints.

C. Training /Capacity-building

Two orientations meetings were conducted on August 29-30, 2012, and September 12-12, 2012, for Regional Prosecutors, IAU chairpersons, members and administrative staff to familiarize attendees with the enhanced business processes for managing administrative complaints. The processes were discussed in detail through lectures facilitated by the TWG members utilizing a number of methodologies: audience polling, case studies, role playing and an open forum. A baseline of the knowledge level of participants was established prior to the beginning of the orientation through a diagnostic examination. At the end of the orientation, another exam was administered to measure improvement in knowledge on specific aspects of IAU topics discussed. A comparison of pre- and post-orientation results showed a general improvement in the participants' level of knowledge of IAU operations, with Cebu and Manila participants' scores averaging 77% and 75% from a pre-orientation average of 56% and 63%, respectively.

D. Complaint Information System

To aid the IAUs in implementing the enhanced business processes, a standard information system, the Complaint Information System or CIS, was developed. The CIS is designed and developed to capture data in each of the six stages of the complaint process. The CIS has the capability to produce reports that can aid in the management, monitoring and evaluation of IAU operations. Please refer to Annex 3.

Given the current resource constraints, the CIS will be implemented separately in each of the regional and central IAU offices, rather than as a centralized system. Centralized system is a massive undertaking that requires extensive planning and substantial financial consideration. Nonetheless, the standard format of the CIS facilitates department-wide consolidation reporting and monitoring of IAU data.

III. Other Observations and Recommended Next Steps

Although significant progress has been made, sustainability and continued effectiveness of IAU operations will require additional modifications to the current procedures.

The following identify areas of improvement and outline suggested recommendations that Department management should consider to further strengthen the IAUs' capabilities in carrying out their mandate.

A. Policies, Systems and Tools to Support IAU Processes and Operation

A.1 Implementable within the short-run (i.e., within 1-2 years)

1. Adoption of Supplemental Policies

Although the Code of Conduct included guidelines for IAU operations, the Code lacks details of procedure in certain areas. A component of this engagement was to craft policies that would address these gaps.

Annex 1 outlines the policies relevant to the operation of the IAU. These policies include the provisions of the Code and a number of suggested supplemental policies as indicated by the following symbol(S) - which are recommended for adoption. **The policies outline in Annex 1 will require review by the Department's top management before they are officially integrated in the body of laws and rules governing the operation and processes of the IAU.**

2. Implementation of the Complaint Information System (CIS)

Though the Complaint Information System has already been completed, it has not been adopted by the Department for implementation. Implementation will require a significant administrative, technological and financial commitment. If implementation is adopted an orientation on the system will be necessary. A hands-on training is necessary for the operators and end users of the system so that they comprehend the importance of the reporting and monitoring capabilities of the system.

3. Development and Implementation of a Consolidation Tool

As previously mentioned, the CIS has been developed for separate installation at each IAU region. Currently reports can only be generated separately for each IAU unit. To generate department-wide reports, a consolidation tool is needed to integrate data from the different IAUs units and produce consolidated information. This tool would provide prompt and accurate reporting of IAU-related metrics and statistics that can be useful in monitoring IAU operations and implementing sanctions when formal charges are filed. With these consolidated reports, the DOJ or other units responsible for implementing sanctions will be immediately notified of such event.

4. Creation and Operation of a Helpdesk

All questions should be directed to the specific IAU unit to address. A helpdesk mechanism can be installed to create an avenue for effectively and efficiently channeling IAU queries and concerns. The specific setup of such helpdesk can be determined after a more careful consideration of the resources available to the Department. In any case, the helpdesk is envisioned to achieve the following objectives:

- Gather all IAU concerns and queries in a real-time manner
- Respond to these concerns and queries most promptly, if not also in real-time manner

- Make available a data bank of IAU concerns and queries for analysis and eventual use/basis for future policy and procedural changes and the like

5. Development of a Manual of Procedures

To expand the avenues for promoting the understanding of IAU processes and operations, a Manual of Procedures (MoP) can be created to augment the process diagrams used to communicate the enhanced processes for handling administrative complaints. This Manual of Procedures will be in a narrative format which likewise includes sections on policies, procedures, and use of forms and the CIS, among others. The MoP, after approval of SOJ, can then be distributed to all IAUs for their continuing reference and guidance. An acknowledgment receipt shall be required of each recipient to evidence the receipt of and acceptance of accountability for the recipient's copy of the manual.

6. Establishing the Authoritative Basis for the Adoption of the Enhanced Business Process, Policies, Procedures and Systems for Handling Administrative Complaints

The necessary department order should be prepared to serve as the formal basis for implementing the enhanced business process, policies, procedures and systems for handling administrative complaints.

A.2 Implementable within the medium-term (i.e., within 3-5 years)

7. CIS Upgrade

The CIS could eventually be upgraded for increased effectiveness and efficiency such that it includes the following features, among others:

- Workflows
- Document retention, such as through imaging
- Department-wide connectivity
- More comprehensive management reporting capability
- Interface with other DOJ systems, e.g., HR system

B. Organizational Structure to Support IAU Processes and Operation

Implementable within the short-run (i.e., within 1-2 years)

1. Institution of a Technical Support Team at the OSEC

While the administrative cases are investigated and prosecuted under a de-centralized regional structure, certain components of the process (approvals of formal charge and most resolutions) remain to be centralized in the Office of the Secretary. To ensure continued efficiency gained by de-centralizing the investigation and prosecution, the OSEC should establish a strong technical complement to assist the SOJ in her function as final approver of the administrative complaints. A technical staff, which possesses the competency and experience required of the post, will help

minimize the risk of having a bottleneck at the OSEC and ensure that final disposition of the complaint at the Department level is promptly achieved.

2. Establishment of a Policy-Making and Oversight Body

The Department must establish sustained guidance and supervision of the IAU regions considering that the IAU is at its infancy stage. Steady and focused leadership is needed for it to be embedded in the organization to ensure effective operation. A consistent, dynamic management structure should provide the overall strategic direction to these IAUs. This body will likewise ensure that strategic plans, programs and policies are crafted and coordinated well with the implementing IAUs. Moreover, it will ensure that the IAUs execute the planned programs, and perform their functions and processes in the most effective and efficient manner possible. This group must consist of permanent employee in the Department to ensure the retention of institutions knowledge through IAU leadership and monitoring.

3. Formation of a Compliance Monitoring Team

An important element of any implementation undertaking is monitoring. To determine whether goals are being met, feedback must be obtained of the performance of that which was implemented. The effectiveness of the IAUs in discharging their functions must be assessed regularly. This function of performance assessments should be the responsibility of an identifiable and mandated Compliance Monitoring Team (CMT). The CMT will be responsible for developing, enhancing and executing IAU monitoring programs that would ensure compliance with policies and adherence to the Department's standards of quality and service levels; gathering and consolidating IAU performance metrics; providing meaningful feedback to DOJ management and other stakeholders that can be a basis for decision-making; identifying areas of control weakness and/or improvement opportunities in IAU operations; and, making recommendations to address the same.

The Compliance Monitoring Team employ a two-level monitoring and appraisal mechanism for the IAUs. A high-level monitoring can be made with the metrics built into and generated by the Complaint Information System at pre-defined timelines and frequency which can aid an in-depth appraisal of IAU operations done through periodic performance audits or reviews.

C. Organizational Processes and Programs to Support IAU Operation

Implementable within the short-run (i.e., within 1-2 years)

1. Linkage to Performance System

In many cases, behavior is influenced by how individuals are rewarded or penalized. Thus, to drive an organization to a desired behavior, its reward system should be steered such that it reflects that goal. Similarly, to increase the likelihood that IAU policies and processes will be put into practice, the same should be connected with the Department's performance system. The measures of compliance and service levels to be established and monitored in the preceding sections should have a corresponding merit and demerit that will ultimately impact a benefit to

the IAU implementers, i.e., financial or otherwise. With this, top management will send a strong signal about its seriousness in implementing and tracking IAU affairs. In turn, this tone at the top, it is hoped, will cascade down the line and motivate people to action.

2. Awareness Programs

A public outreach programs should be developed and carried out to inform the public of the existence of the IAU. The specific awareness campaign strategies would depend upon the resources available to the Department, the objective of a particular strategy, and the target audience. These could, however, include the use of the Department's existing website, creation of posters, tapping social media, and doing press releases.

3. Conduct of Training on the Code of Conduct and Underlying Laws, Rules and Regulations

While operations to handle administrative complaints have already been ongoing, many of the personnel potentially subject to these proceedings are unfamiliar with the Code of Conduct. The basis for all administrative complaints filed with the DOJ. Though a series of orientations were conducted in June, July and August of 2011, it was limited to 243 members of DOJ upper management, mostly prosecutors. This comprised of only 6% of the DOJ NPS 3,798 human resource. Presently, the rest of the organization gain knowledge of the Code's provisions presumably from their own reading of their copy of the Code. While one can assume that the Code can easily be understood it being no different in nature and complexity from other laws that Department personnel are accustomed to interpreting, training ensures a concrete and uniform understanding of the Code's provisions among all personnel, lawyer and non-lawyer staff alike. Not only compelling the acquisition of knowledge of the Code, the conduct of training provides a venue for discussing many scenarios and points that enrich and deepen the basic understanding that one initially had.

IAU POLICIES FOR HANDLING ADMINISTRATIVE CASES

A. Policies on Filing and Receiving Complaints

1. Only administrative complaints against DOJ prosecutors and prosecution support staff will be received and handled by the IAU. If the complaint submitted is both administrative and criminal in nature, the IAU shall nonetheless proceed with resolving the complaint administratively. The IAU, however, can advise the Complainant to separately file a criminal complaint. Criminal complaints should be filed with the appropriate organizations as follows. **(S)**

Salary Grade of Respondent	Office to Direct the Complaint to
27 and above	Office of the Ombudsman
26 and below	Prosecution Office of the Department of Justice

However, if the submitted complaint involves sexual harassment, the complaint shall be directed to the DOJ central or regional Committee on Decorum and Investigation (CODI) for handling. **(S)**

2. Anyone, including officials and employees of the Department of Justice and the public in general, may file with the IAU an administrative complaint against DOJ prosecutors and prosecution support staff. Likewise, the disciplining authority may *motu proprio* initiate administrative action against their subordinates. In any case, the complaint shall be handled following the processes established for IAU proceedings. **(S)**
3. Only written complaints will be received. This can be in any form of writing, which may be signed or unsigned (for anonymous complaints), verified or unverified (if the complaint is initiated by the disciplining authority). Verbal complaints will not be entertained.
4. An administrative complaint should be filed with, and received by, the IAU Office that has jurisdiction over the matter, which shall be guided by the following:

Respondent	IAU with Jurisdiction
Prosecutors and support staff of a region, and IAU members of IAU-ORP (S)	IAU – Office of the Regional Prosecutor (IAU-ORP)
Prosecutors and support staff at the NCR prosecution offices	IAU – Office of the Prosecutor General (IAU-OPG)
Support staff under the OPG	IAU – Office of the Prosecutor General (IAU-OPG)

Prosecutors in OPG, City Prosecutors at NCR, IAU Chairpersons, Regional Prosecutors, Prosecutor General	IAU – Office of the Secretary of Justice (IAU-OSEC)
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5. In cases of filing with an IAU that does not have jurisdiction over a complaint, the Complainant shall be directed to the proper IAU having jurisdiction thereof. However, in exceptional cases, for instance, where the Complainant is quite physically distant from the proper IAU office and does not have means or access to such office, the IAU may initially receive the complaint being filed, after which, it shall subsequently endorse said complaint to the IAU with jurisdiction. **(S)**
6. The administrative complaint shall be addressed to:
 - The Chairperson
 - Internal Affairs Unit (IAU-OSEC/IAU-OPG/IAU-ORP, as applicable)
 - Office of the (Secretary/Prosecutor General/Regional Prosecutor, as applicable)
 - Office Address
7. The complaint shall contain the following information:
 - a. Full name and address of the complainant;
 - b. Full name, address, position, and place of station of the person complained of; and,
 - c. Narration of the relevant and material facts substantiating the acts or offenses complained of.
8. The complaint shall be accompanied by certified true copies of documentary evidence and affidavit of witnesses, if any, and by a certification or statement of non-forum shopping.
9. The number of copies of the complaint and supporting documents submitted shall be equal to the number of respondents plus three (3) extra copies. **(S)**
10. The General Information Sheet (GIS) shall be accomplished by the Complainant or his representative upon filing of the complaint. **(S)**
11. The IAU Administrative Officer shall be responsible for the initial review of the documents filed with the IAU. However, the IAU Chairperson has ultimate responsibility for determining compliance with the filing requirements. **(S)**
12. Non-compliant submissions personally made shall not be received. Non compliant submission mailed shall not be docketed. A letter requesting for compliance shall be written to the Complainant. The complaint shall be formally acknowledged as received, and recorded as such in the IAU system, upon full compliance with the filing requirements. **(S)**
13. An anonymous complaint shall be filed under the name of a complainant determined as follows: **(S)**

Respondent	Complainant
Prosecutor	Head of Office

Support staff	Administrative Officer of Office
Administrative Officer of Office	Head of Office

However, if the Head of Office is an IAU member, Regional Prosecutor or Prosecutor General, the complainant shall be the office authority who is next in line following the hierarchy based on seniority in ranks. **(S)**

14. A Working File Copy and a Backup Copy of the documents shall be prepared. The Working File Copy shall be used by the case handlers during the entire process of resolving a complaint. The Backup Copy shall be regularly updated and retained by the IAU Administrative Officer for security and business continuity purposes. **(S)**
15. The receiving IAU Administrative Officer shall forward the complaint received to the IAU Chairperson within twenty-four (24) hours from the time of receipt of documents.

B. Policies on Assigning Administrative Complaints

1. A complaint received shall be assigned by the IAU Chairperson to an IAU member for evaluation.
2. The assignment will be based on raffling. If IAU member to whom the complaint is raffled inhibits or is inhibited the complaint shall be assigned to the IAU member who is next in the number series attributed to the IAU members. The “skipped” IAU member shall, in turn, be the first priority in assigning the next complaint. **(S)**
3. In the case of inhibition of the IAU Chairperson and/or any IAU member the Regional Prosecutor or the Prosecutor General shall be given by the Secretary of Justice a blanket authority to designate the personnel serving as the IAU Chairperson and/or member with respect to the particular complaint to which the inhibition referred to. **(S)**
4. The grounds for inhibition in a Preliminary Investigation shall be the same grounds to apply in the inhibition of an IAU Chairperson or member. **(S)**
5. The complaint received by the IAU Chairperson shall be assigned to an IAU member for evaluation within two (2) business days. **(S)**
6. The assignments shall be documented (AS). **(S)**

C. Policies on Evaluating Administrative Complaints

1. A complaint shall be evaluated by the assigned IAU member within five (5) days from his/her receipt of the complaint.

2. Initially, a complaint shall be evaluated as either (a) for dismissal of complaint; (b) for preliminary conference; (c) for preliminary investigation; or, (d) not for action.
3. A complaint shall be evaluated as for *Dismissal of Complaint* if there is no cause for action.
4. A complaint shall be evaluated as for *Preliminary Conference* if there is a need to verify the documents with the Complainant. **(S)**
5. A complaint shall be evaluated as for *Preliminary Investigation* if there is a need for the Respondent’s answer in resolving the complaint. **(S)**
6. A complaint shall be evaluated as “not for action” where it is anonymous such that the guilt of the respondent is difficult to establish; the complaint is not administrative in nature such that it falls outside the jurisdiction of the IAU to handle^a; the complaint is to be governed by an IAU other than the initially receiving IAU, etc. **(S)**

^a*Please refer to Part III of the Codes of Conduct, Procedure in the Handling of Complaints Before the Internal Affairs Unit, Section IV, for in-scope complaints/offenses.*

7. If there is an irreconcilable disagreement between the IAU member and the IAU Chairperson with regards to the evaluation, the latter shall prepare a review resolution which will include pertinent section of the Evaluation Report (see Policy 8). If there is an irreconcilable disagreement between the IAU Chairperson and the Regional Prosecutor or Prosecutor General, or the Regional Prosecutor/Prosecutor General and the Secretary of Justice, the higher authority shall prepare a review resolution or final resolution which will include the pertinent section of the Evaluation Report. **(S)**
8. The results of the evaluation shall be documented in the Evaluation Report (ER), which shall be approved as follows: **(S)**

Evaluation	Final Approving Authority (w/in DOJ)
For preliminary conference	IAU Chairperson
For preliminary investigation	IAU Chairperson
Not for action	IAU Chairperson
Dismissal of complaint	Secretary, if respondent is a prosecutor Regional Director, if support staff of region

D. Policies on Investigating Administrative Complaints

1. A preliminary conference or preliminary investigation shall be carried out by the same IAU member who was assigned to evaluate the complaint.
2. A preliminary conference or preliminary investigation shall be conducted within sixty (60) days from the date the investigating IAU member receives the case records. **(S)**

3. The preliminary conference shall be held in the office of the assigned IAU member, or in a place deemed appropriate by the assigned IAU member. **(S)**
4. In a preliminary investigation:
 - a. The Notice to File Counter-Affidavit (CA) shall be prepared by the IAU member assigned to undertake the preliminary investigation.
 - b. The respondent shall be notified of the complaint filed against him/her, within five (5) days from receipt of records. The Respondent shall be given ten (10) days from receipt of notice to submit his/her answer under oath, with supporting sworn statements and documents.
 - c. Only the respondent's answer or counter-affidavit with supports, if any, shall be sought for filing subsequent to the receipt of complaint. A reply-affidavit and a rejoinder shall not be required for submission by the parties to the case. **(S)**
5. The Formal Charge shall contain the following information:
 - a. Specification of the charges;
 - b. Brief statement of material or relevant facts;
 - c. A directive to answer the charge/s in writing under oath in not more than seventy-two (72) hours from receipt of the charge;
 - d. Advice for the respondent to indicate whether or not he/she elects a formal hearing;
 - e. Notice that respondent is entitled to be assisted by a counsel of respondent's choice;
 - f. The address of the IAU to which the answer to the formal charge should be mailed **(S)**
6. The filing of a formal charge shall be finally approved by the Secretary of Justice. The Formal Charge and Order of Preventive Suspension shall be signed by the Secretary of Justice, regardless of the position of the respondent .
7. The formal charge shall be served upon the respondent, within five (5) days after approval of the Secretary.
8. A docket number shall be assigned to a complaint after a formal charge has been approved by the Secretary. **(S)**
9. In the case where the respondent resigns *prior* to the filing of a formal charge, the administrative complaint filed against him/her shall automatically be dismissed. Such automatic dismissal shall hold despite the existence of a criminal complaint also filed against said respondent. **(S)**
10. Where the respondent's resignation takes place *after* the filing of a formal charge, the gravity of the offense shall first be determined as a basis for the determination of a complaint's dismissal. Hence, if the formal administrative charge carries the penalty of dismissal or those with accessory penalty of forfeiture of benefits and disqualification to hold public office, the charge shall be sustained and administrative proceedings shall continue notwithstanding the resignation. However, if the offense is for a lesser penalty, the charge shall be dismissed. **(S)**

11. In the case where the Complainant decides to withdraw the complaint, the following guidelines shall be observed: **(S)**

- a. Dismiss the complaint, if involving a light offense, and there is a compromise agreement constituting the decision and signifying an amicable settlement between the parties as allowed by the Revised Rules on Administrative cases in the Civil Service
- b. Sustain the complaint and continue with administrative proceedings, if graver offense and with merit, proceeding in the same manner as that prescribed for filing anonymous complaints per Receiving Policy 13.

12. In case of a formal administrative hearing:

- a. A hearing officer shall be designated by the IAU Chairperson from among the IAU members other than the member who conducted the preliminary investigation. **(S)**
- b. A prosecuting officer shall be designated based on the following guidelines: **(S)**

Respondent	Prosecuting Officer	Designating Authority
Support Staff – Region	Prosecutor of a region	Regional Prosecutor
Prosecutor - Region	Prosecutor of a region	Regional Prosecutor
Support Staff – NCR	DOJ or NCR prosecutor	Prosecutor General
Support Staff – Prosecutor General	DOJ or NCR prosecutor	Prosecutor General
Prosecutor – NCR	DOJ or NCR prosecutor	Prosecutor General
Head of office	Regional Prosecutor, Provincial Prosecutor, City Prosecutor	Undersecretary
Prosecutors in OPG, City Prosecutors at NCR, IAU Chairpersons, Regional Prosecutors, Prosecutor General	Senior Deputy State Prosecutor, Regional Prosecutor, Deputy Regional Prosecutor, Provincial Prosecutor, City Prosecutor, of the same rank	Undersecretary in-charge of IAU-OSEC

- c. The parties shall be notified by the hearing officer of the date of the hearing at least ten (10) days prior thereto.
- d. Only the witnesses whose affidavits have been submitted and served on the adverse party at least five (5) days prior to the date of the scheduled hearing, may be allowed to testify during said hearing. The affidavit of any witness shall constitute his/her direct testimony, subject to cross-examination, redirect examination and re-cross examination. The IAU Member-Hearing Officer may nonetheless subpoena other witnesses in the interest of substantial justice.

- e. The parties shall be allowed the assistance of counsel and the right to the production of evidence through the compulsory process of subpoena and subpoena ducestecum.
- f. If the parties so desire, the hearing officer may allow the submission of memoranda within a non-extendible period of ten (10) days from the submission of case for decision.
- g. The hearing shall be terminated within thirty (30) days from the commencement of the hearing, unless extended by the IAUChairperson in meritorious cases.

E. Policies on Resolving Administrative Complaints/Cases

1. An administrative complaint/case is considered resolved when there is either (a) a dismissal of the complaint or charge, (b) an imposition of admonition, censure or warning, or (c) an imposition of penalty of reprimand, suspension, forced resignation, or dismissal from service.
2. An administrative complaint or case is to be finally decided by the following offices:

Respondent	Decision	Authority with Final Decision
Support Staff – Region	<ul style="list-style-type: none"> - Dismissal of complaint - Imposition of admonition/warning/censure - Imposition of penalty of reprimand/suspension/forced resignation/dismissal from service 	Regional Prosecutor
Support Staff – NCR	<ul style="list-style-type: none"> - Dismissal of complaint - Imposition of admonition/warning/censure - Imposition of penalty of reprimand/suspension/forced resignation/dismissal from service 	Secretary of Justice
Support Staff – Prosecutor General	<ul style="list-style-type: none"> - Dismissal of complaint - Imposition of admonition/warning/censure - Imposition of penalty of reprimand/suspension/forced resignation/dismissal from service 	Secretary of Justice
Prosecutor – NCR and Region	<ul style="list-style-type: none"> -Dismissal of complaint -Imposition of admonition/warning/censure 	Secretary of Justice
	<ul style="list-style-type: none"> Imposition of reprimand/suspension/forced resignation/ dismissal from service 	President of the Philippines
City Prosecutor – NCR, State Prosecutor at the	<ul style="list-style-type: none"> -Dismissal of complaint -Imposition of 	Secretary of Justice

Central Office, Senior Deputy State Prosecutor, IAU Chairperson, Regional Prosecutor, Prosecutor General	admonition/warning/censure	
	Imposition of reprimand/suspension/forced resignation/ dismissal from service	President of the Philippines

3. The assigned IAU member-hearing officer shall resolve the case and submit to the IAU Chairperson the resolution containing their findings and recommendation within twenty (20) days from the termination of the formal administrative hearing when elected by the respondent or clarificatory hearing when one is conducted. When the respondent does not elect a formal administrative hearing/formal investigation, or does not file an answer to the formal charge, the assigned IAU member shall resolve the case and submit to the IAU Chairperson their findings and recommendation within twenty (20) days from the submission of the answer or termination of the 72-hour period given to respondent to submit an answer and no answer is filed. **(S)**
4. The IAU Chairperson shall forward the resolution with comments within ten (10) days to the Secretary of Justice, the Prosecutor general, or the Regional Prosecutor, as the case may be, for appropriate action.
5. With respect to the outcome of the investigation where there is an irreconcilable disagreement between the IAU member and the IAU Chairperson, a review resolution should be completed with the pertinent section of the Preliminary Investigation Report (PIR) or the Formal Investigation Report (FIR). Where there is an irreconcilable disagreement between the IAU Chairperson and the Regional Prosecutor or Prosecutor General, or the Regional Prosecutor/Prosecutor General and the Secretary of Justice, the higher authority shall a review resolution or final resolution with the pertinent section of the PIR or FIR **(S)**
6. The parties to the case and the head of office of the respondent shall be furnished a copy of the resolution within ten (10) days from the Secretary's or Regional Prosecutor's approval of the resolution.
7. With respect to complaints to be forwarded to the Office of the President, the resolution shall be so forwarded within ten (10) days from the Secretary's concurrence to the resolution.
8. The Working File Copy pertaining to complaints finally resolved by the Office of the Secretary of Justice shall be eventually returned to the originating IAU for safekeeping. **(S)**

F. Policies on Resolving Motions for Reconsideration

1. A motion for reconsideration of any decision of the Regional Prosecutor, Secretary of Justice, the President may be filed within fifteen (15) days from receipt of a copy of the decision.
2. A motion for reconsideration may be entertained only on the following grounds:

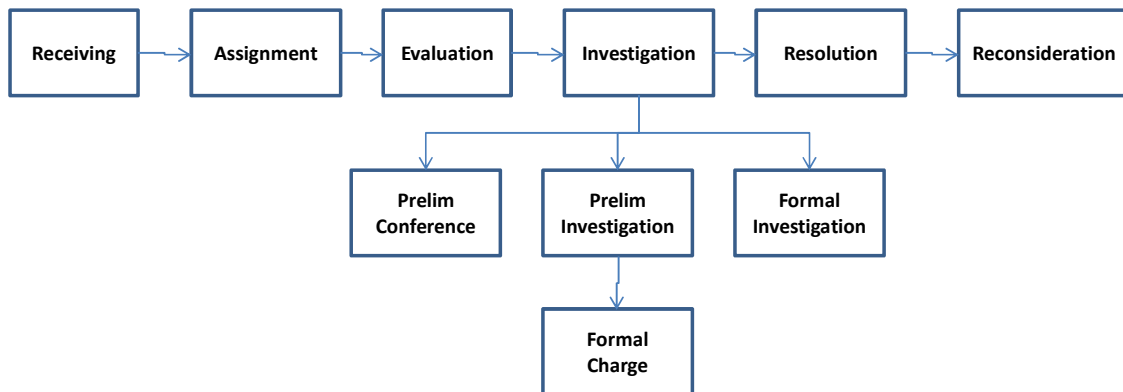
- a. Newly discovered evidence which materially affects the decision rendered
 - b. Serious error of facts or law or irregularities have been committed which are prejudicial to the interest of any of the parties seeking reconsideration
 - c. The decision is not supported by the evidence on record.
3. The filing of a motion for reconsideration shall stay the execution of the decision that is being reconsidered.
 4. Only one (1) motion for reconsideration shall be entertained
 5. The motion for reconsideration shall be resolved within fifteen (15) days from the filing thereof.
 6. The motion for reconsideration shall be resolved by the office promulgating the decision as indicated below.

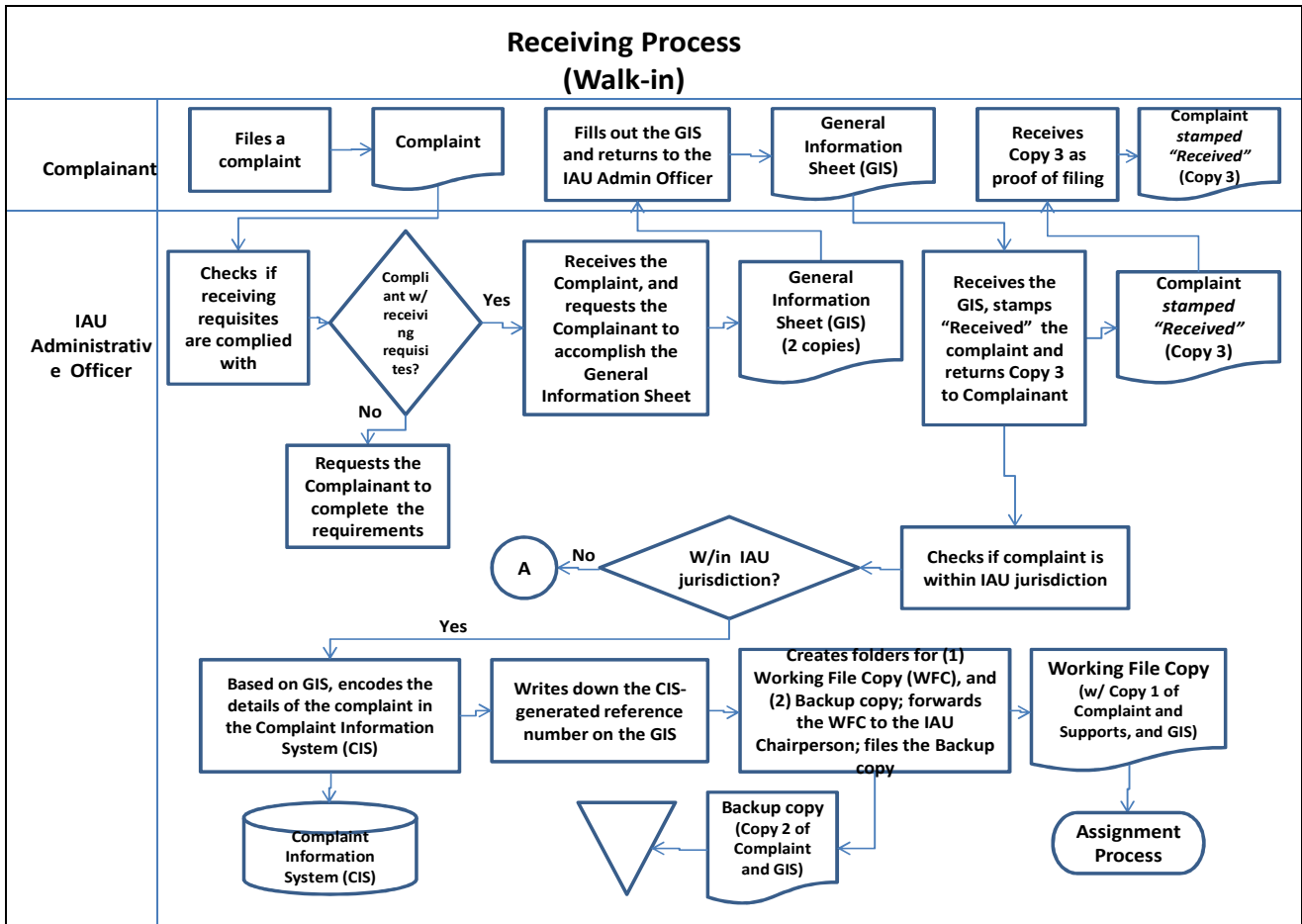
Promulgating Office	Office Resolving the MR
Office of the Regional Prosecutor	Office of the Regional Prosecutor
Office of the Secretary of Justice	Office of the Secretary of Justice
Office of the President of the Philippines	Office of the President of the Philippines

Department of Justice
Internal Affairs Unit-
Office of the Regional Prosecutor

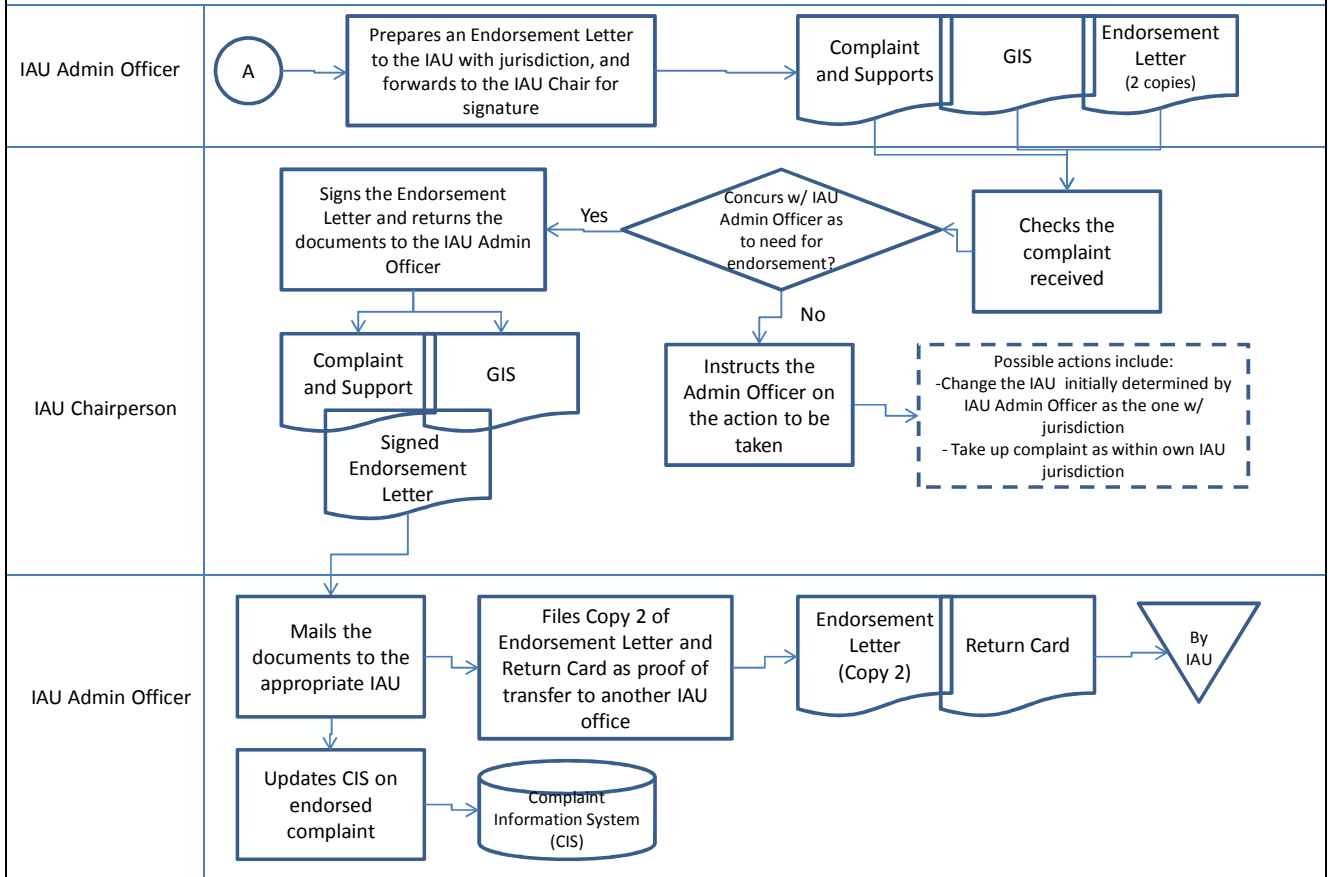
**Flowchart of the Enhanced
Business Processes for
Handling Administrative
Cases**

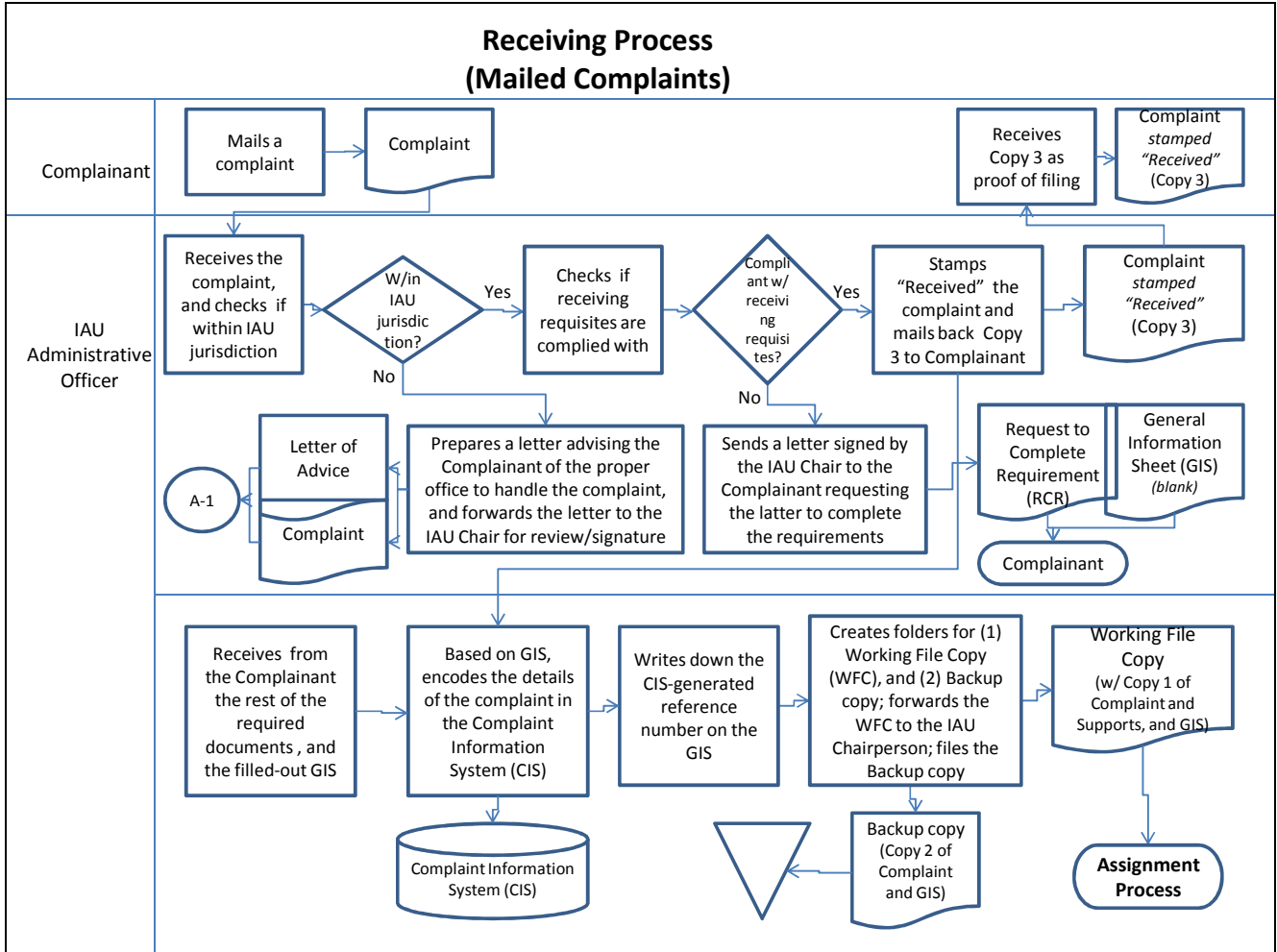
Legal Processes for Handling Administrative Cases Top View



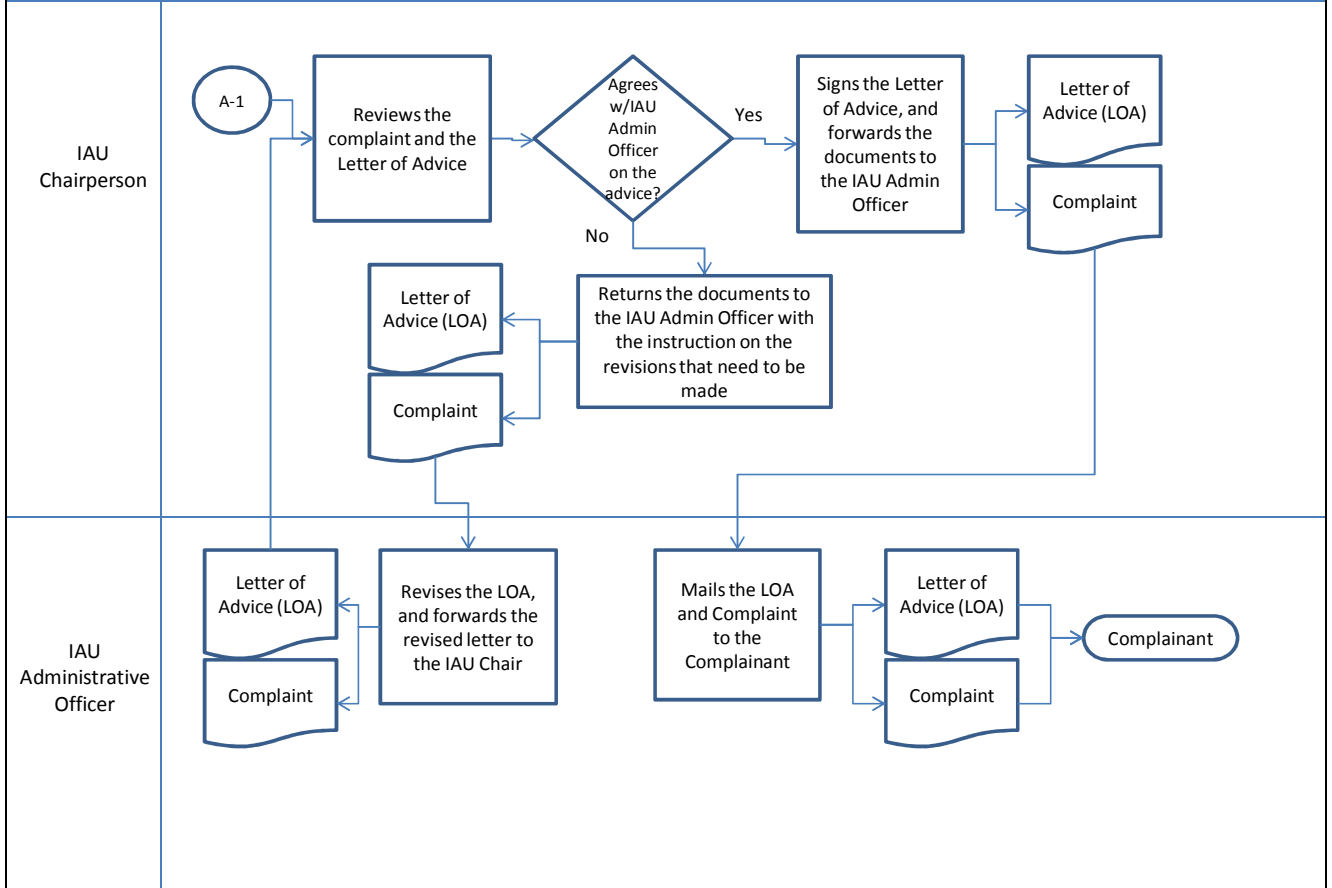


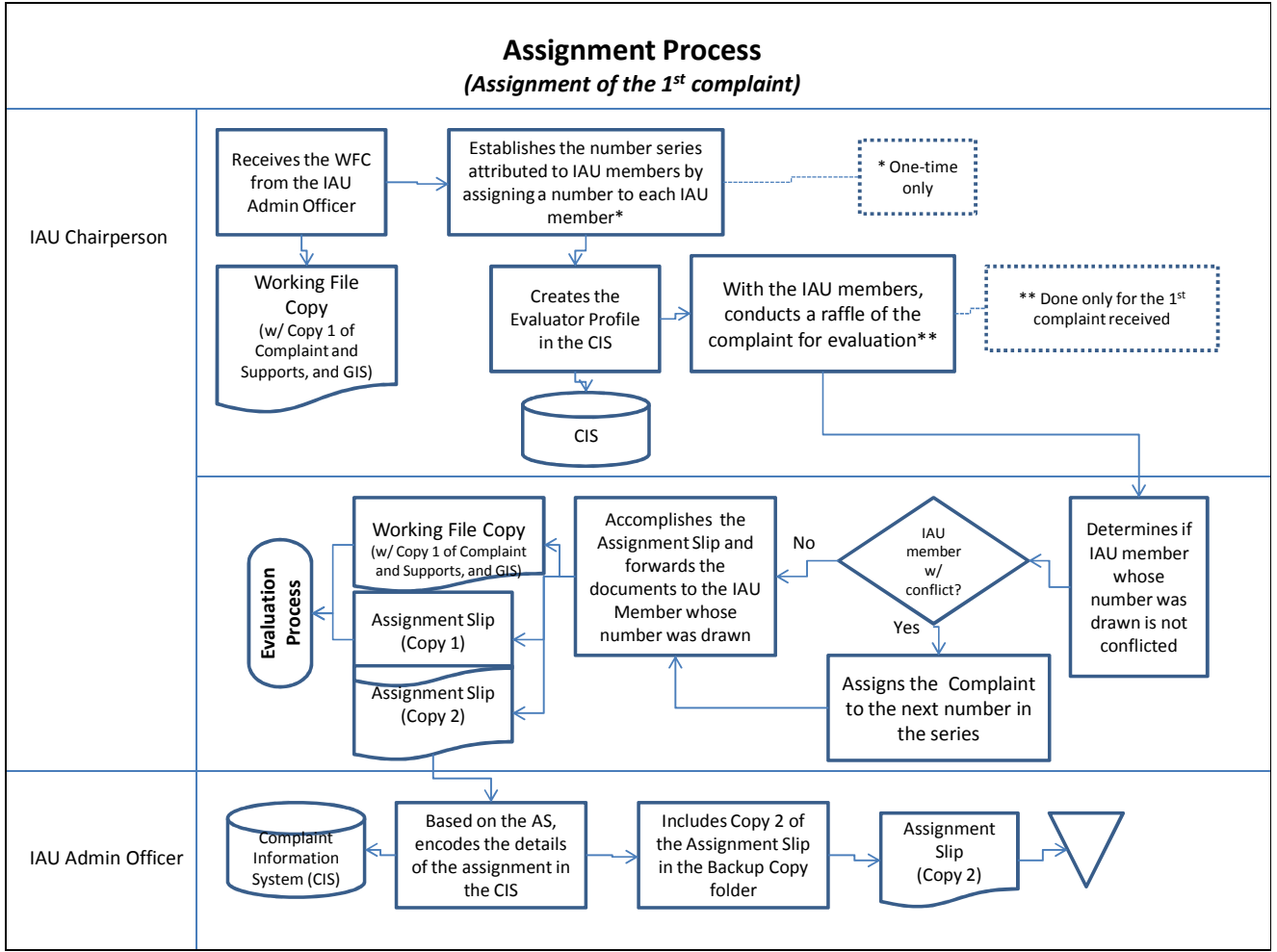
Receiving Process (Walk-in – cont)

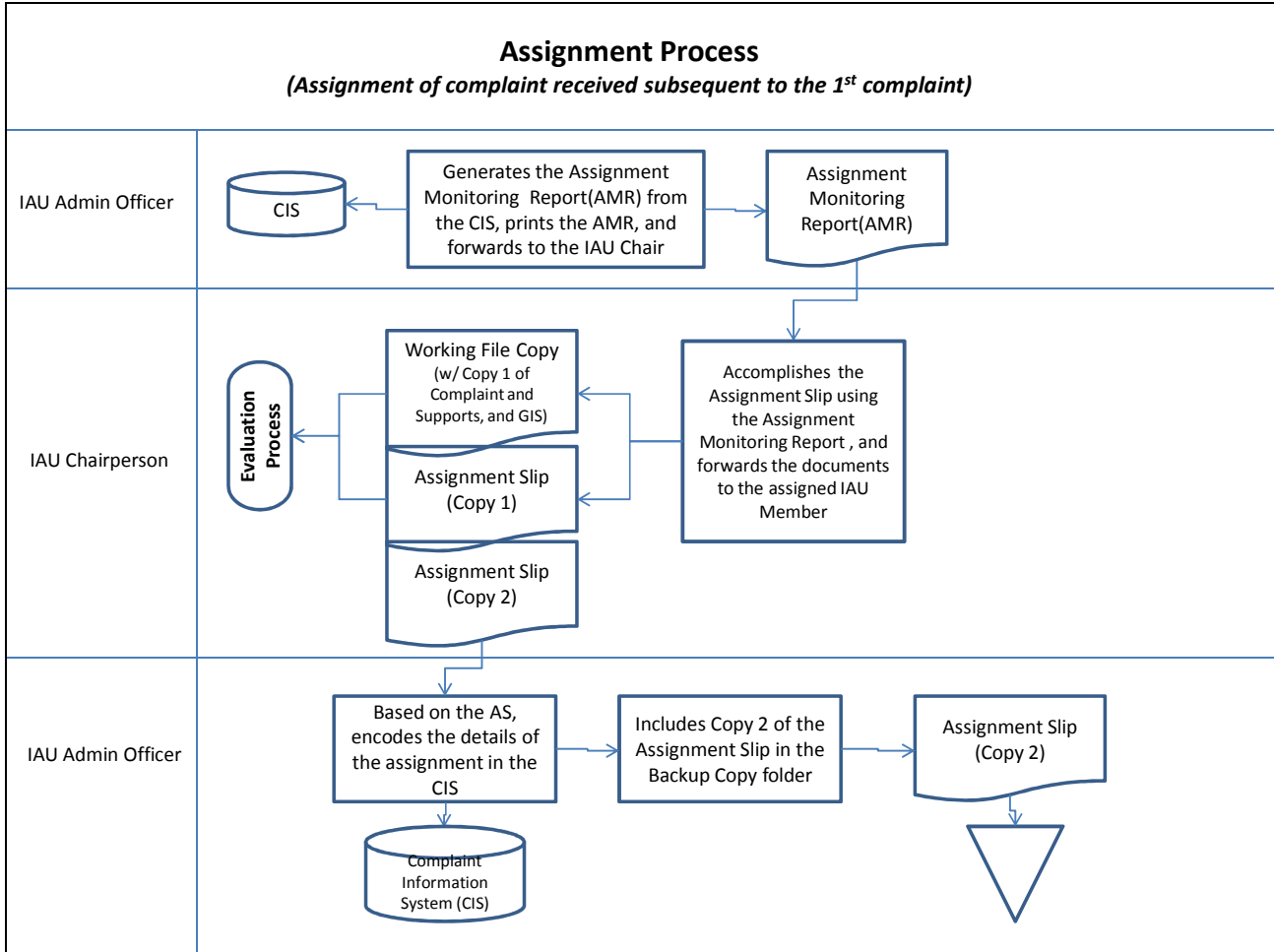


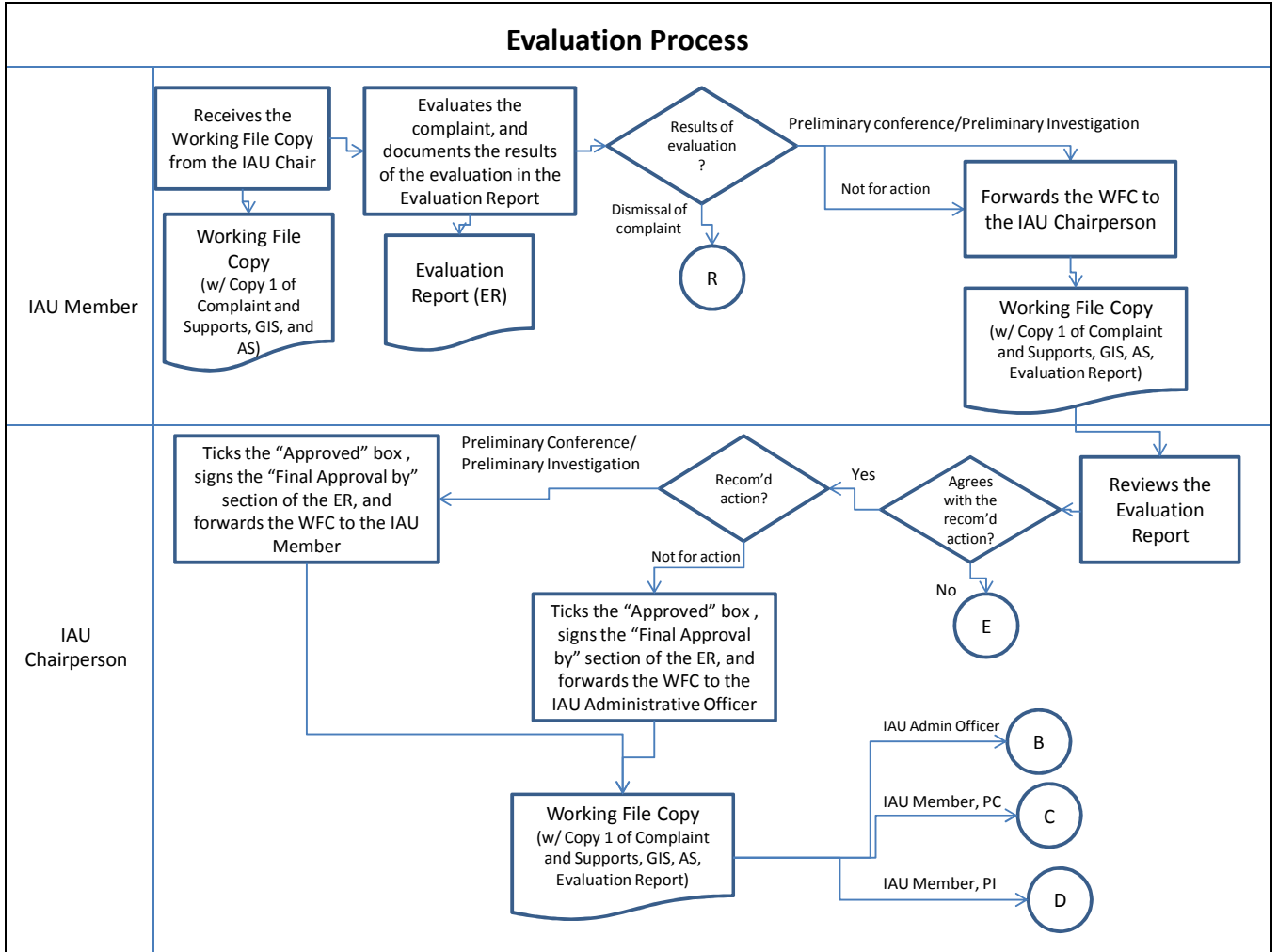


Receiving Process (Mailed Complaints -cont)

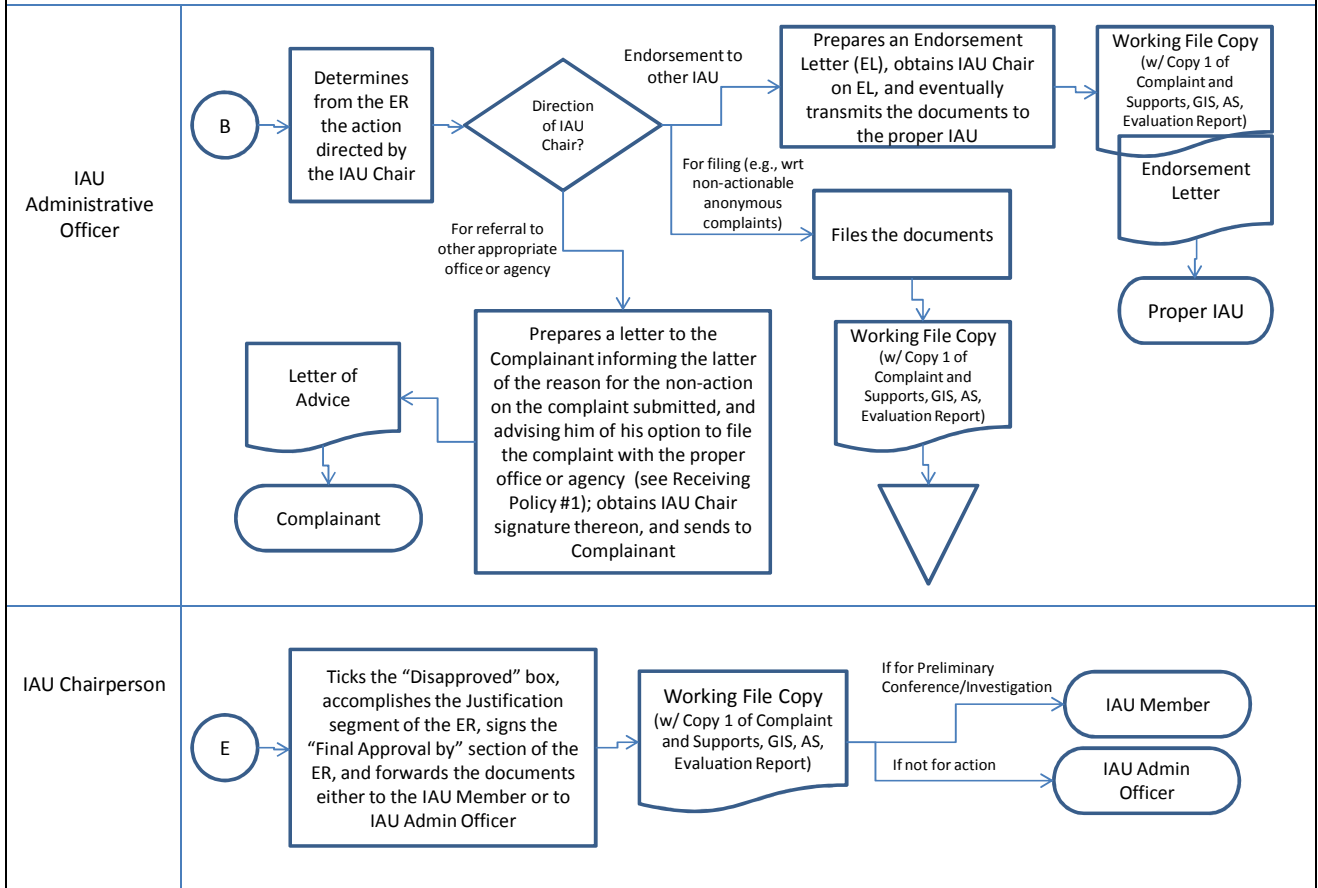




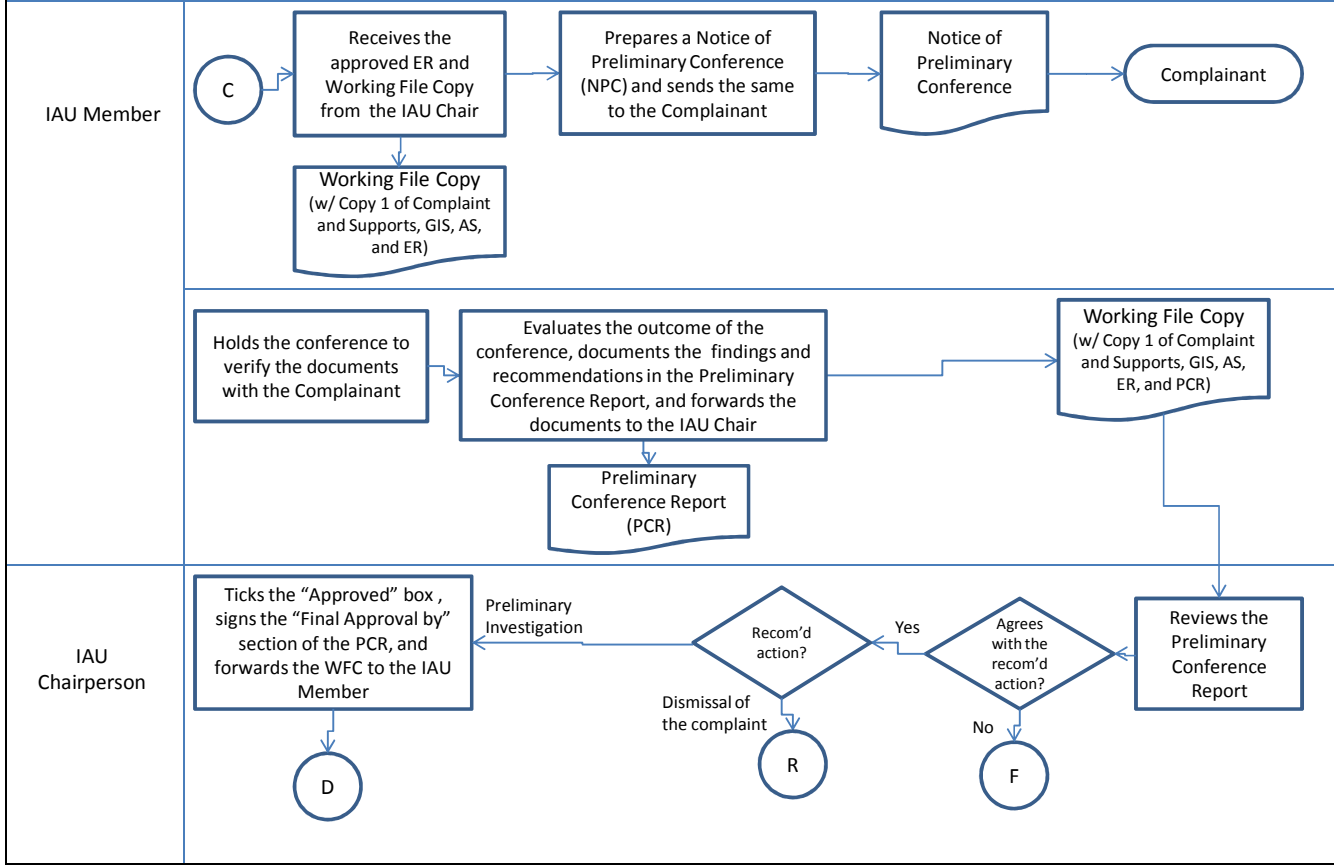




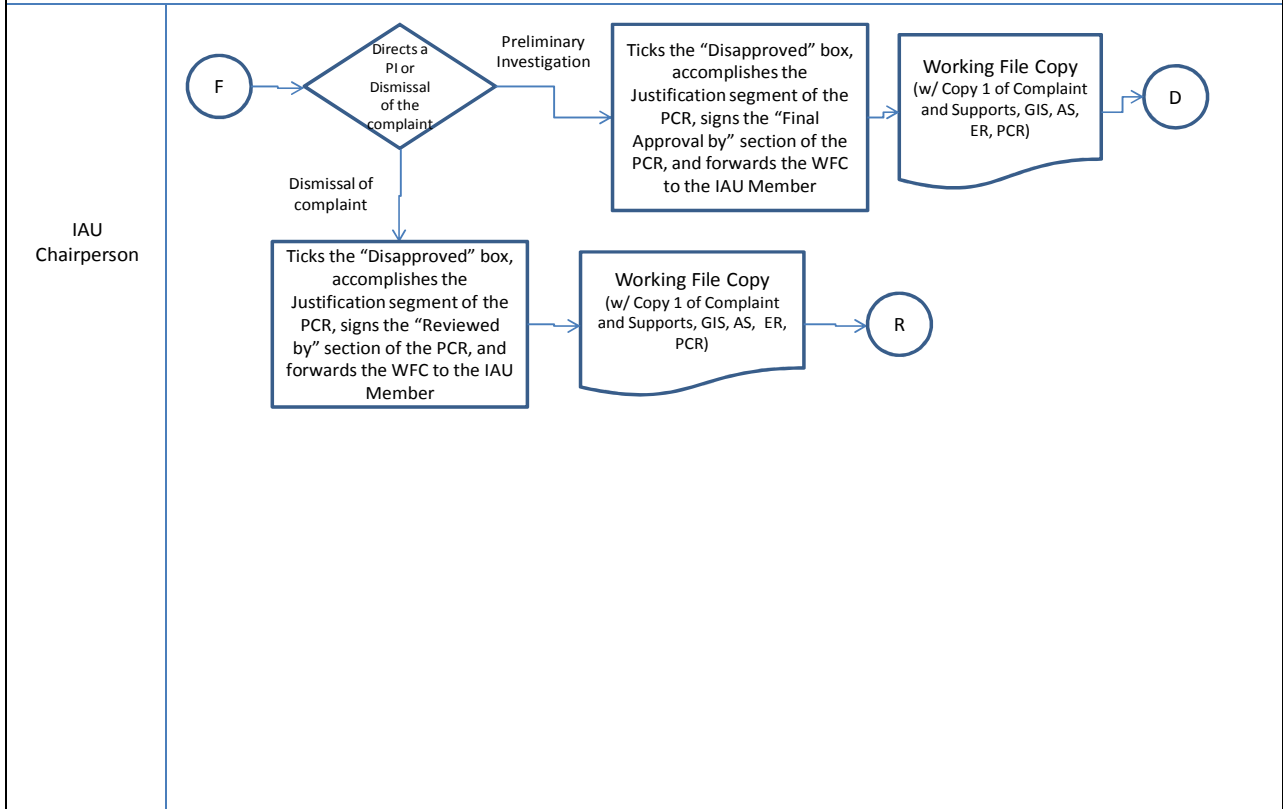
Evaluation Process - cont



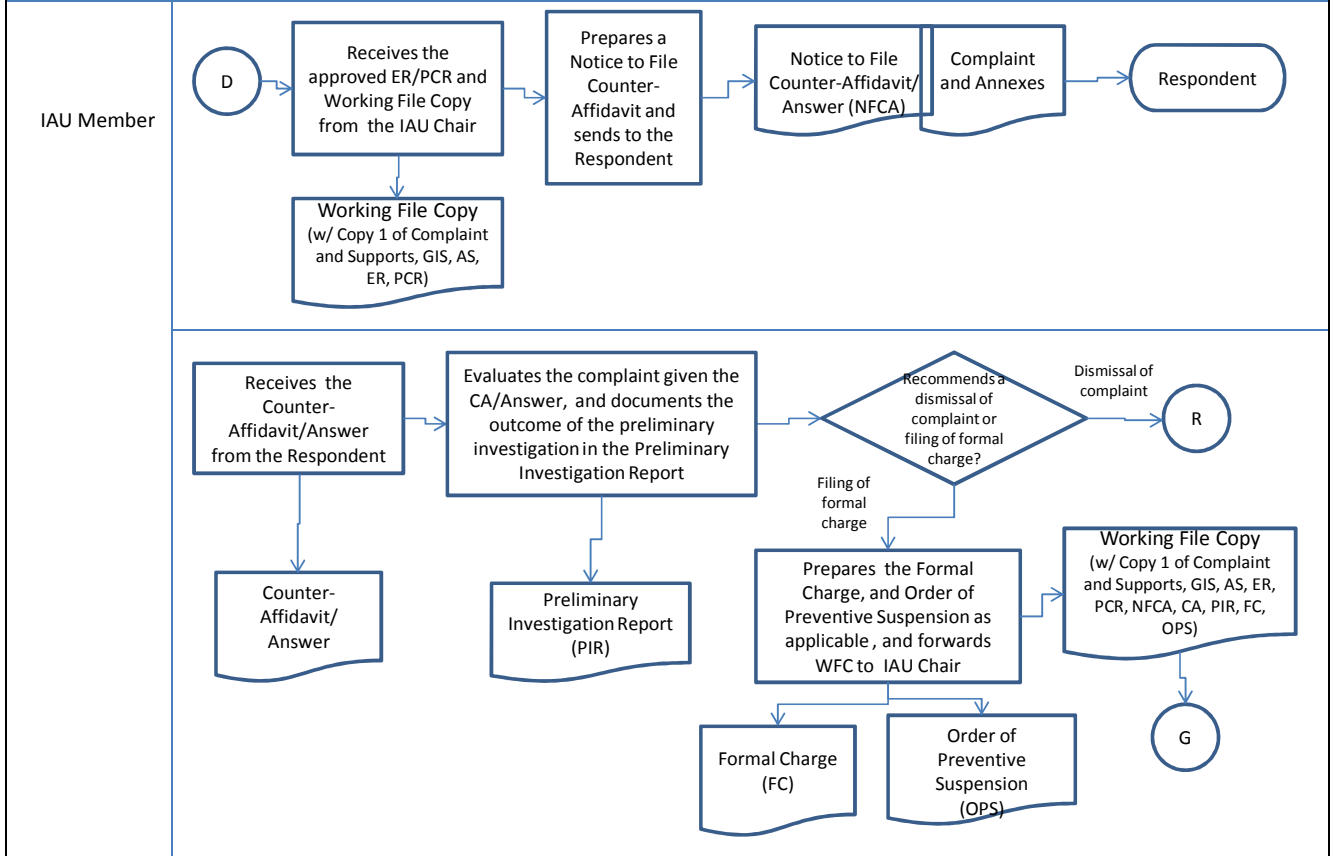
Investigation Process (Preliminary Conference)



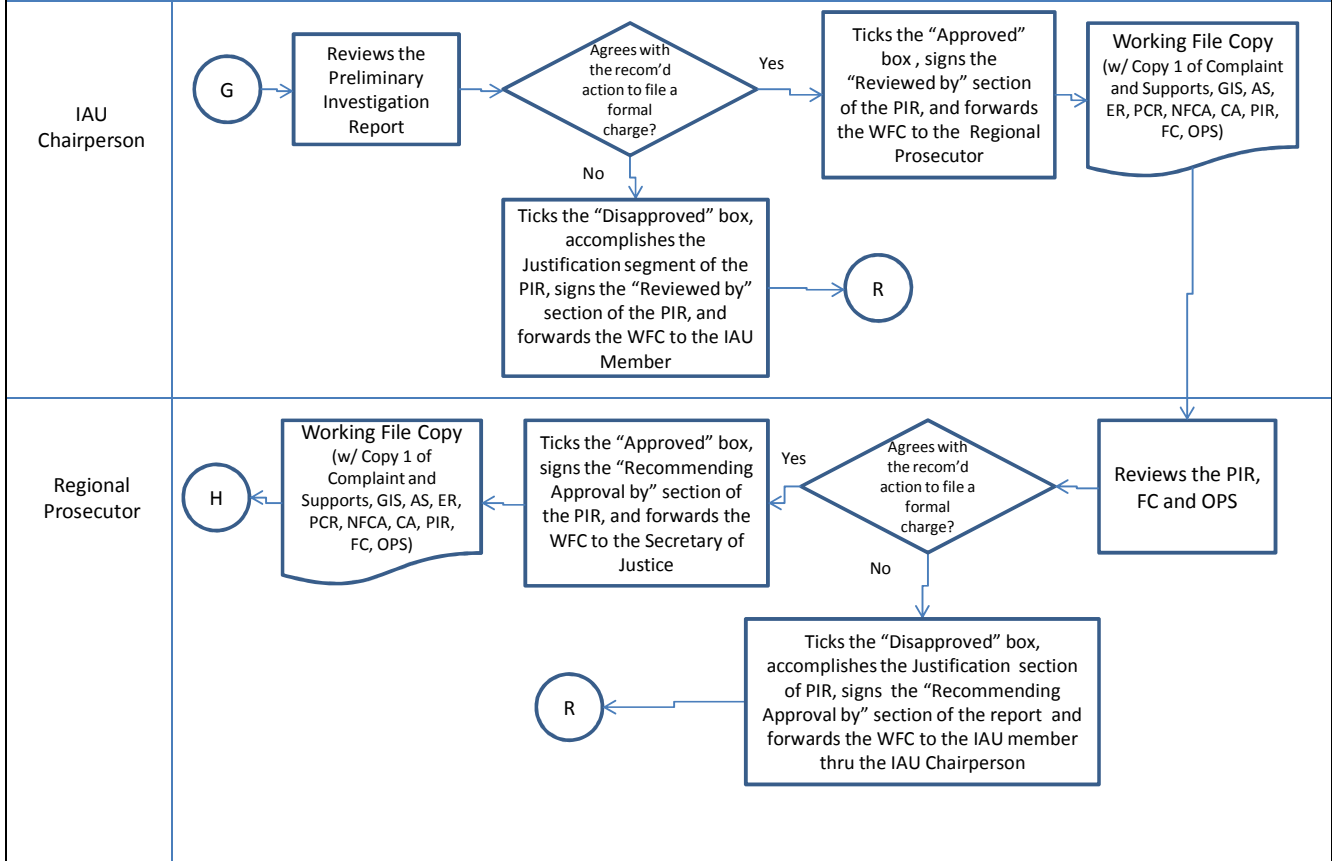
Investigation Process (Preliminary Conference -cont)



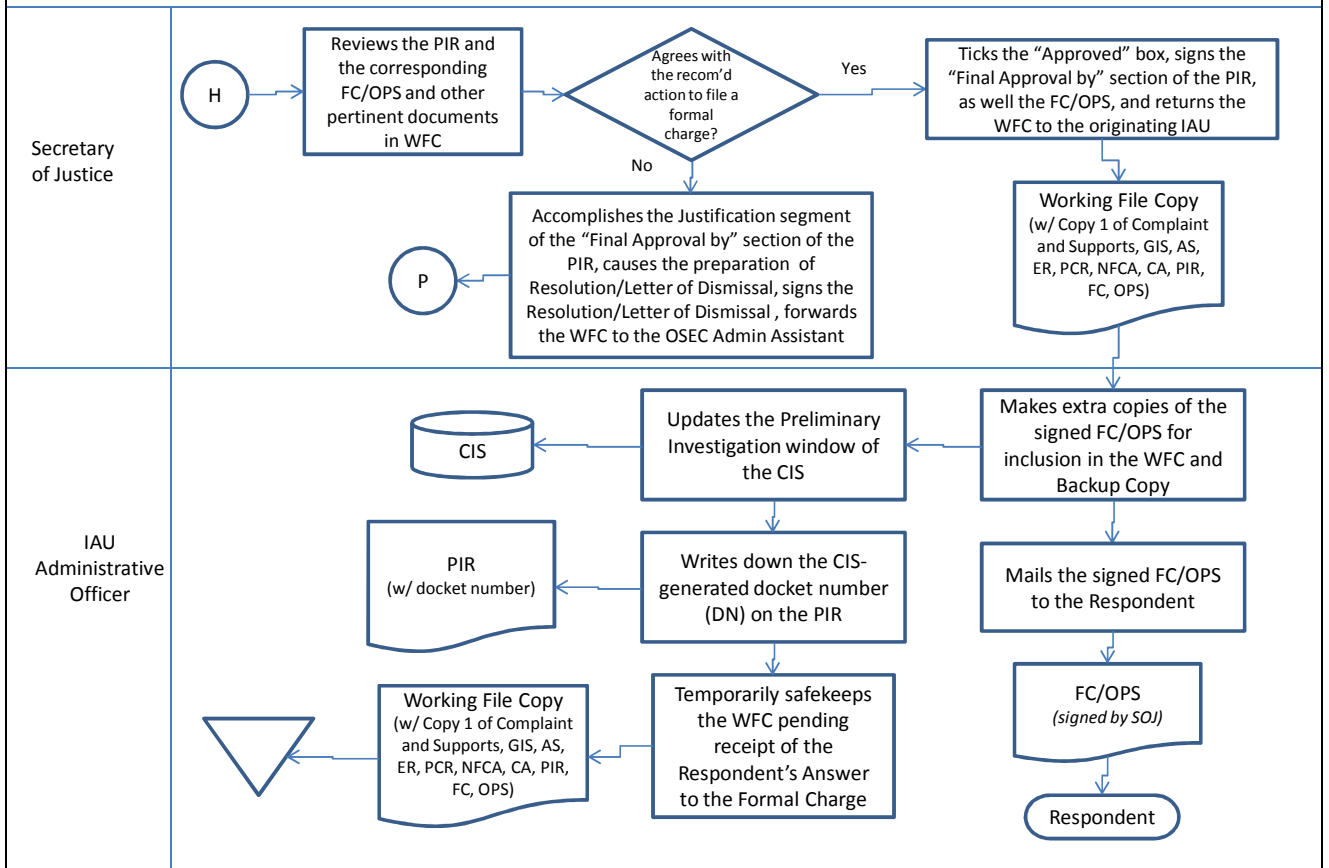
Investigation Process (Preliminary Investigation)



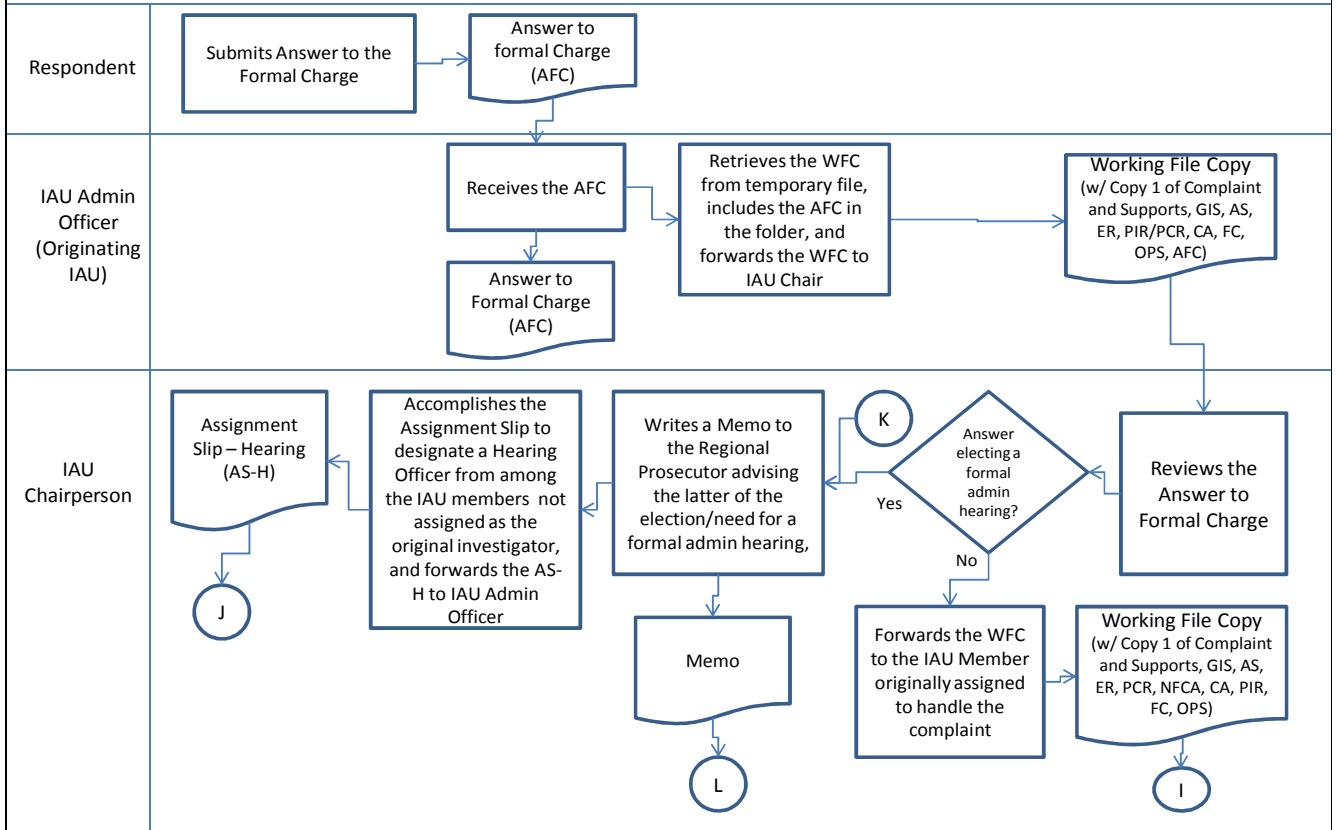
Investigation Process (Preliminary Investigation - cont)



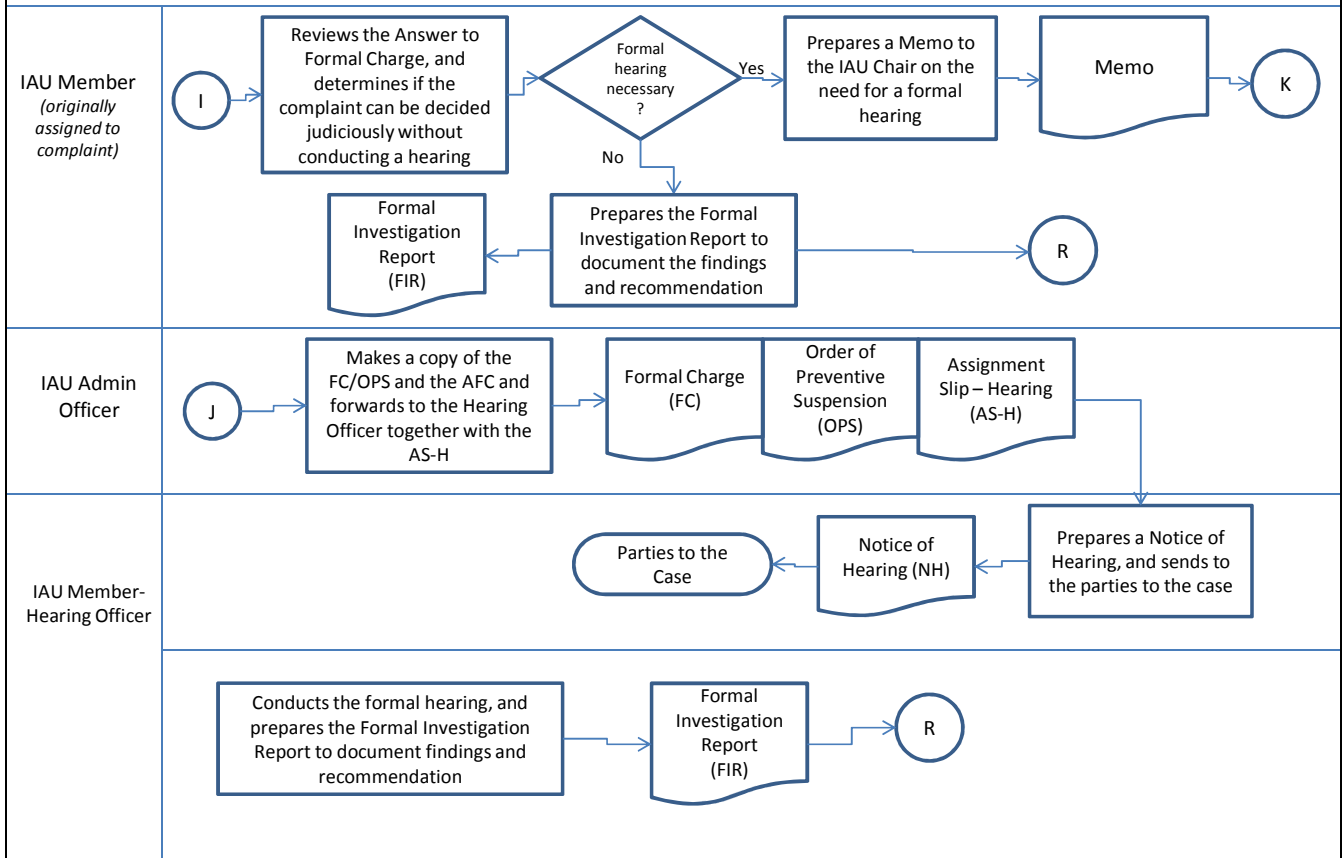
Investigation Process (Filing of a Formal Charge)



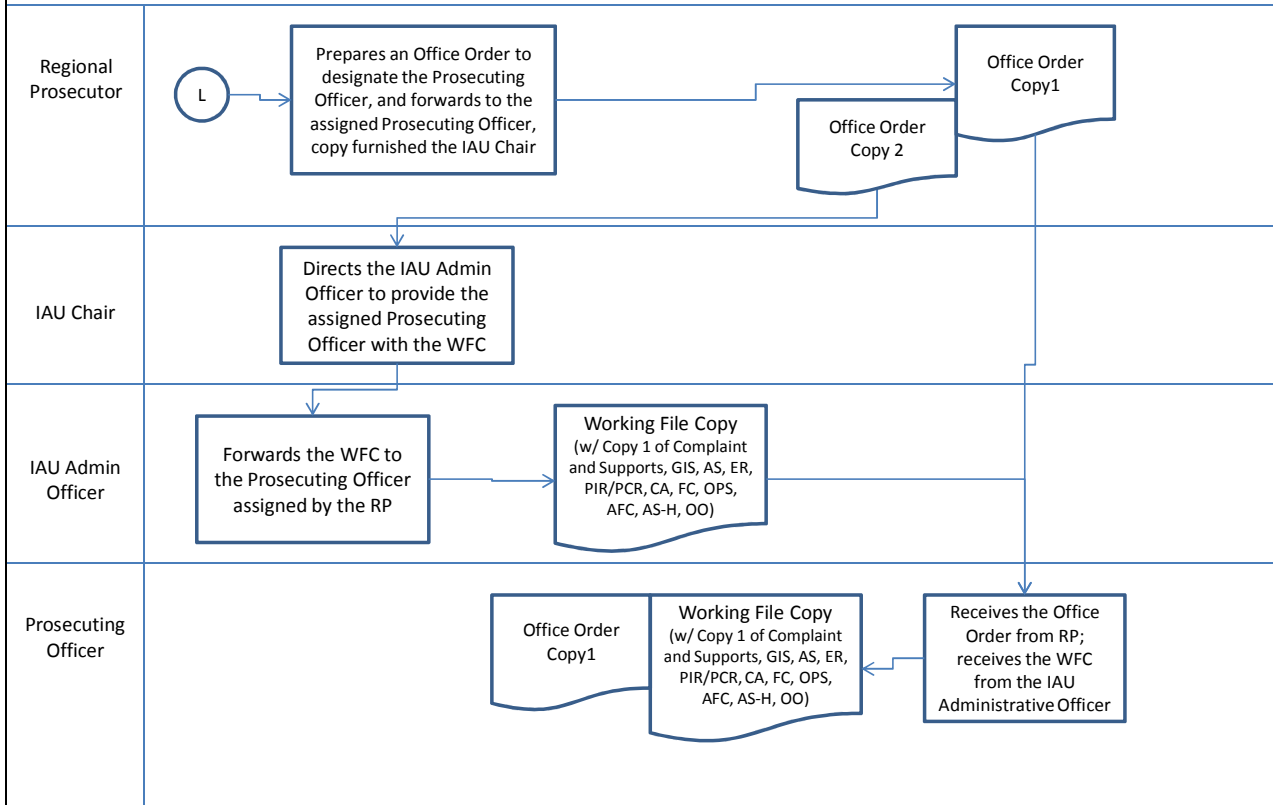
Investigation Process (Formal Investigation)



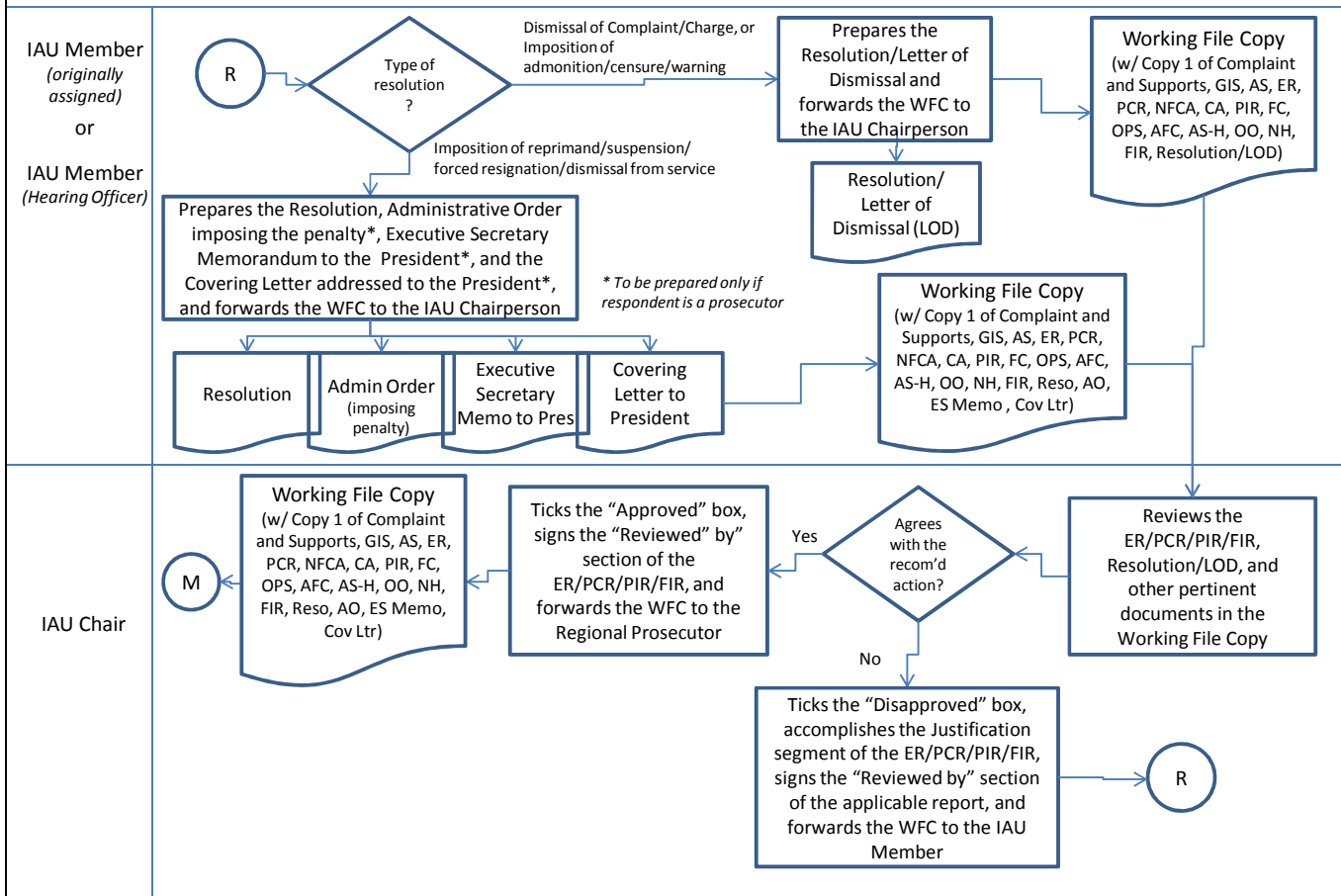
Investigation Process (Formal Investigation -cont)



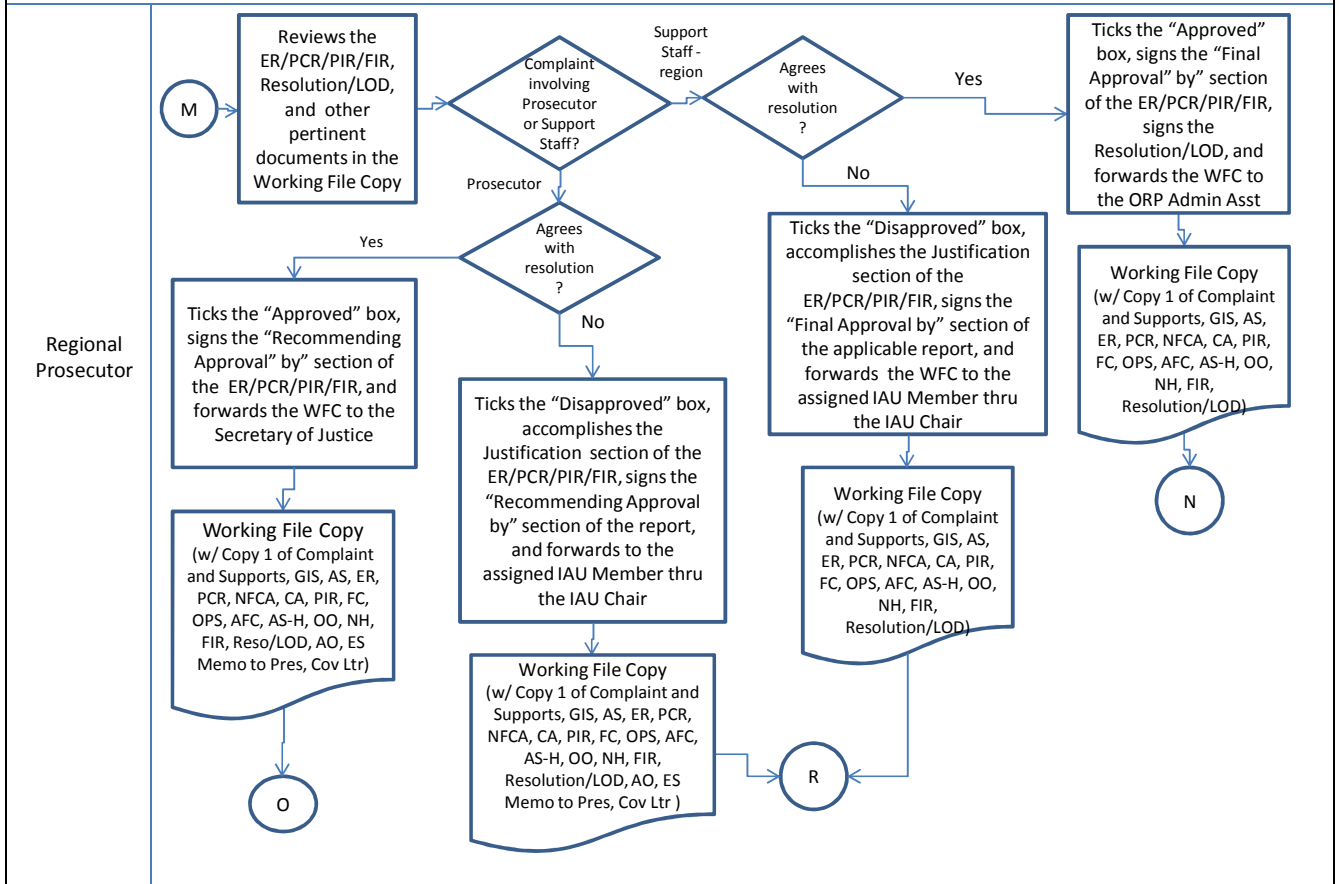
Investigation Process (Formal Investigation - cont)



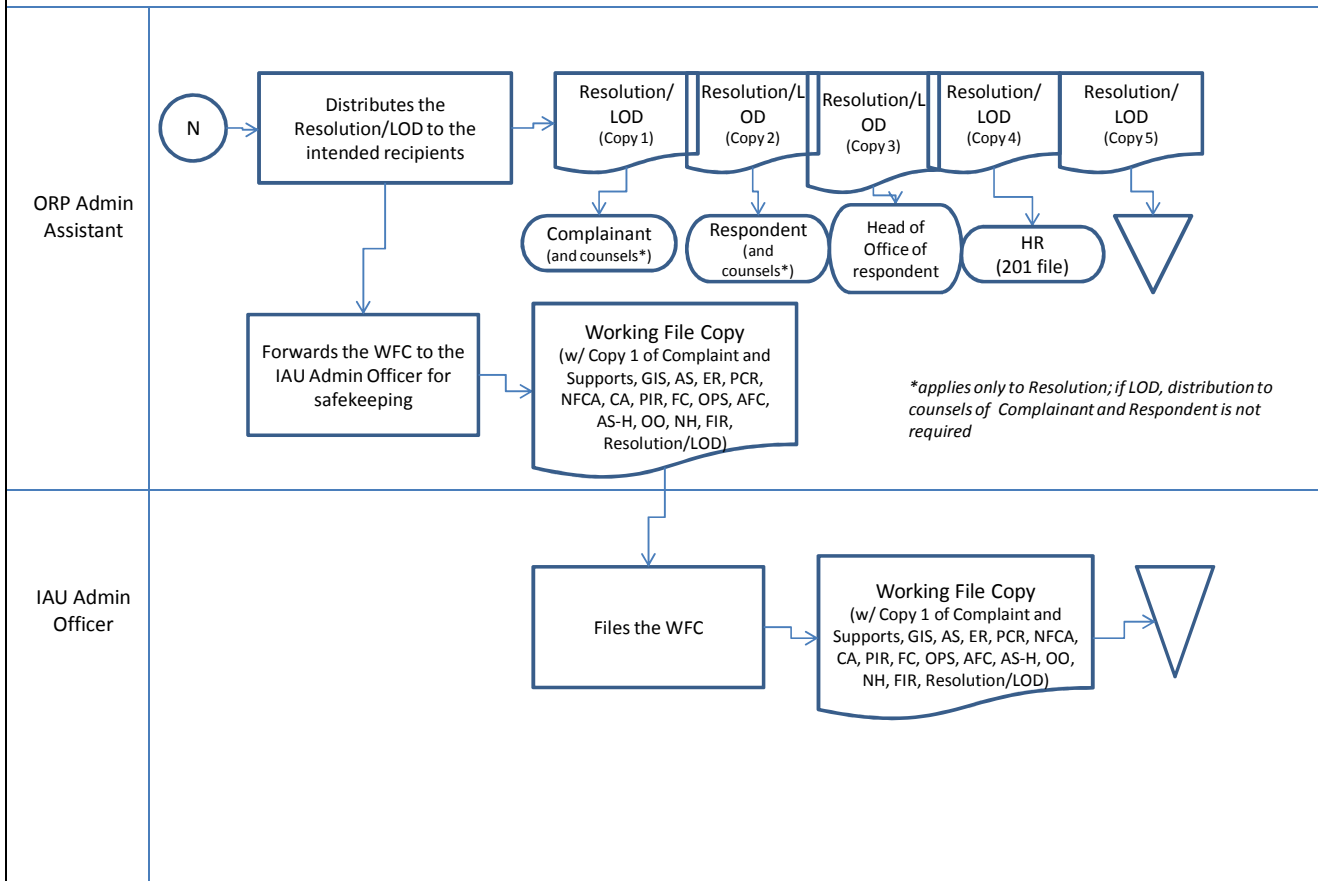
Resolution Process



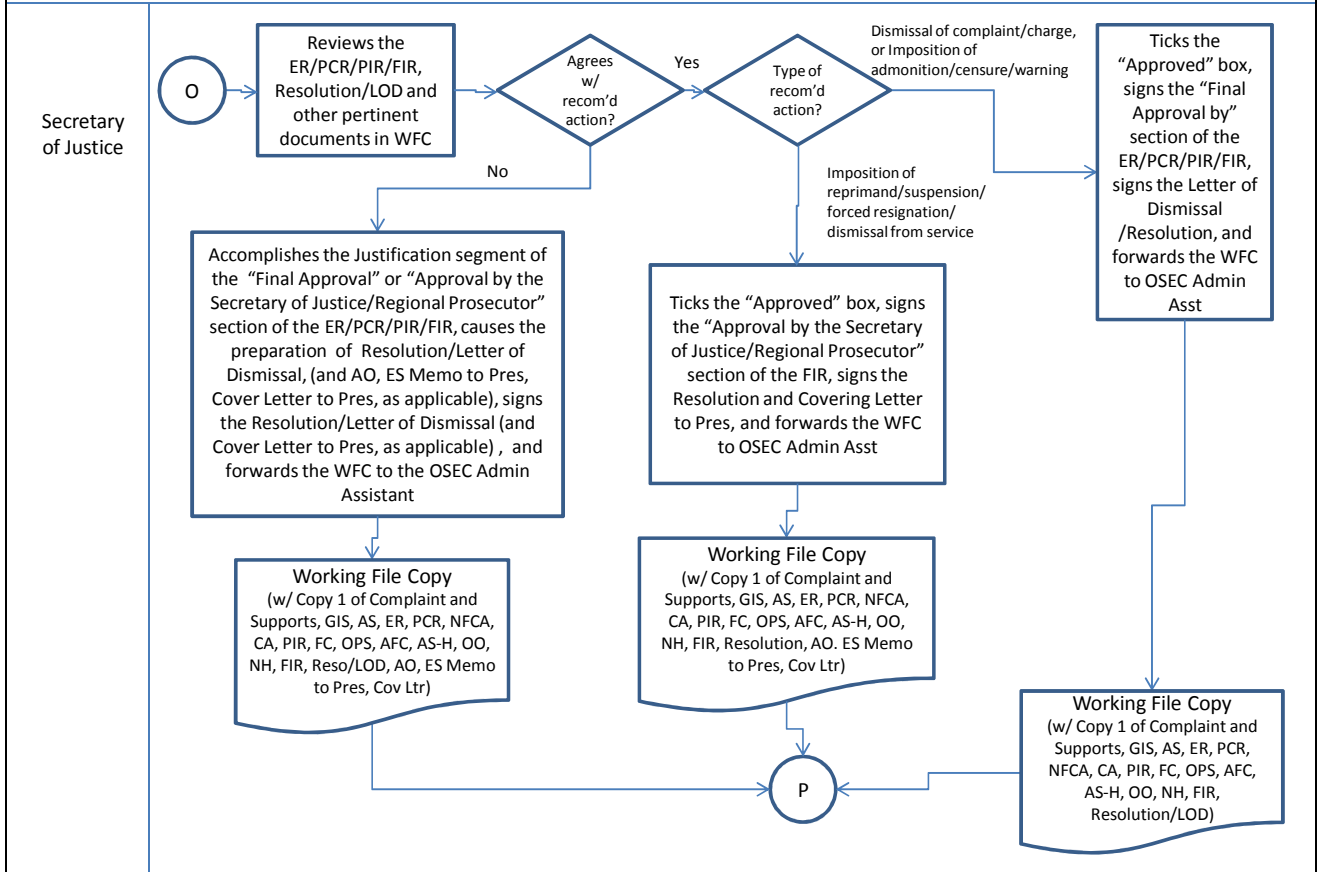
Resolution Process - cont



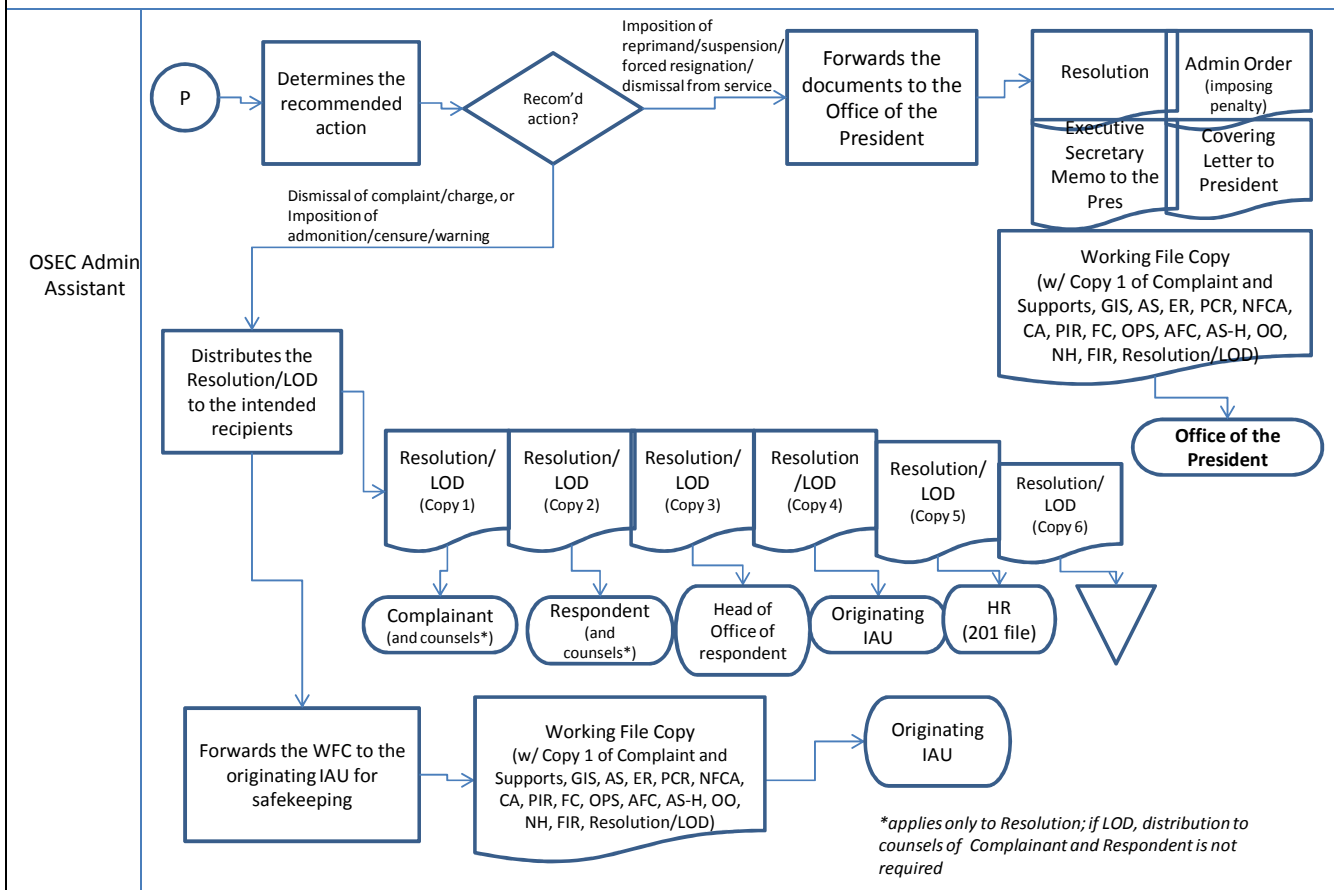
Resolution Process - cont



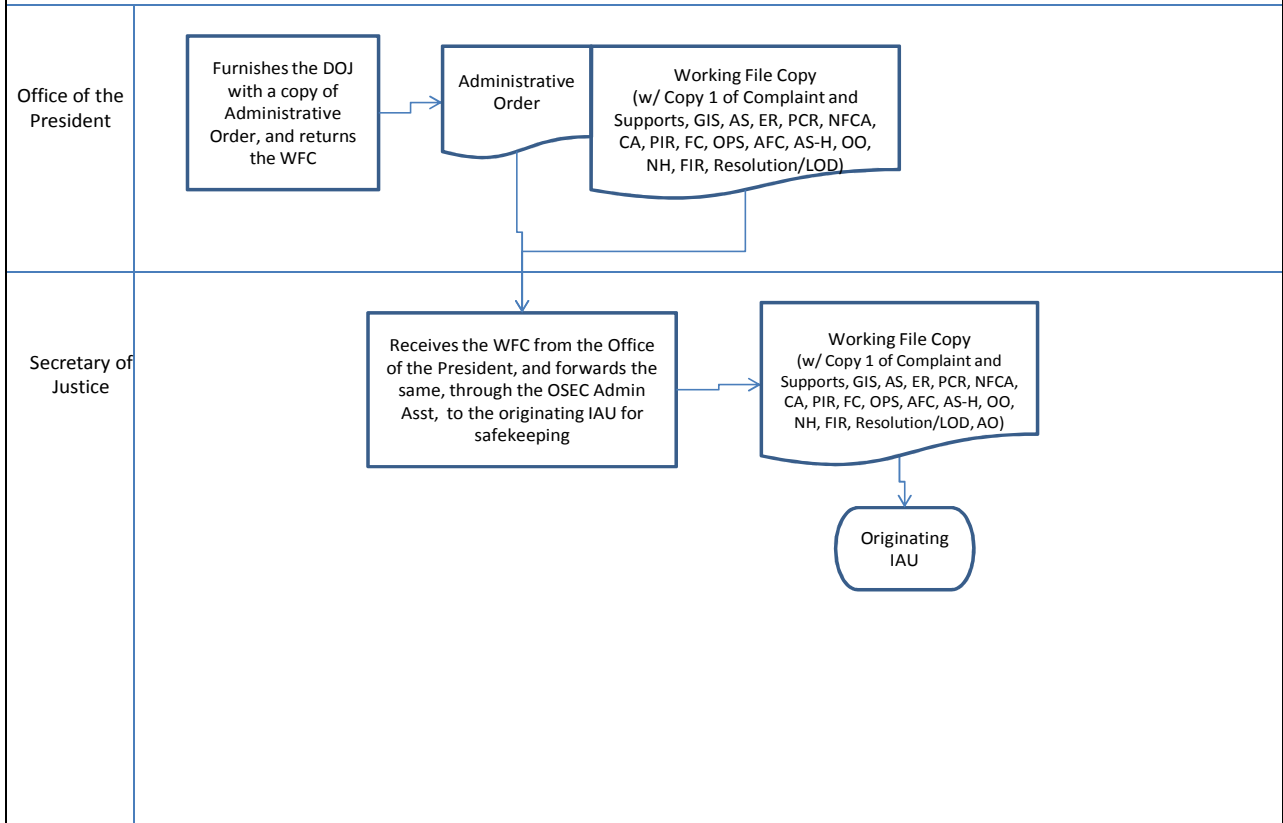
Resolution Process - cont



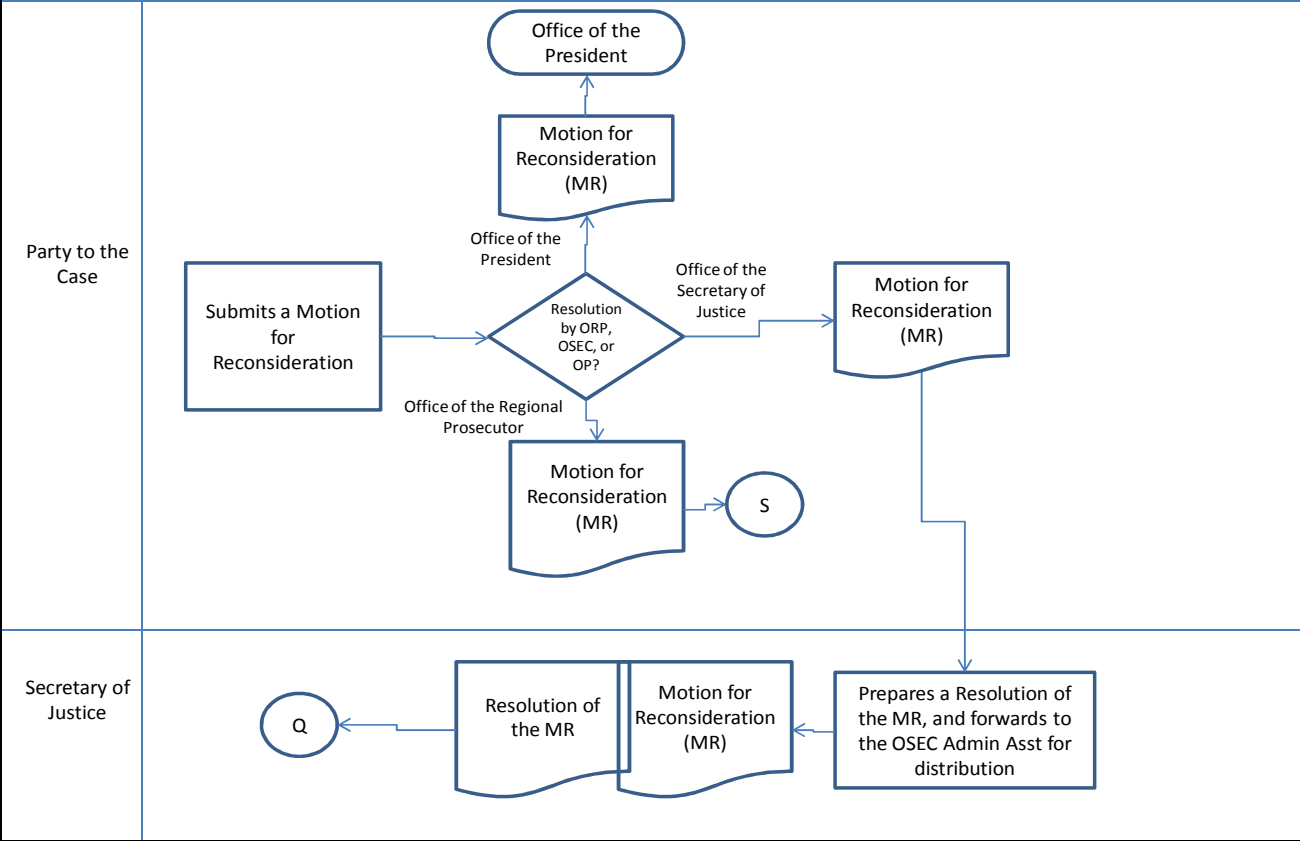
Resolution Process - cont



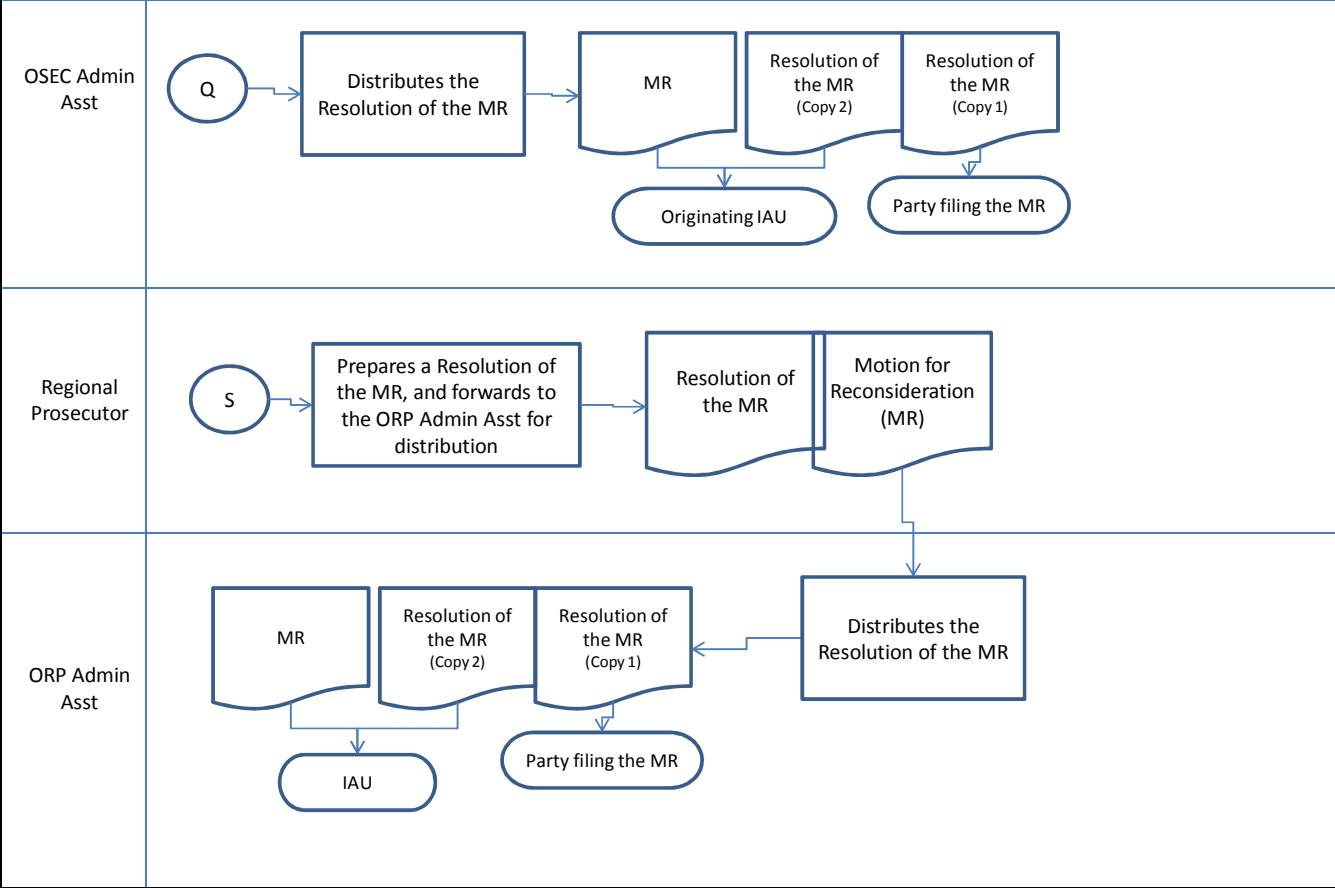
Resolution Process - cont



Reconsideration Process



Reconsideration Process - cont



COMPLAINT INFORMATION SYSTEM SCREENSHOTS

Main Menu

Complainant Entry Screen

Respondent Entry Screen

Respondent		GIS Number	I-001
Respondent Information			
Last Name:	<input type="text"/>		
First Name:	<input type="text"/>	MI:	<input type="text"/>
Address:	<input type="text"/>		
Telephone:	<input type="text"/>		
Office:	<input type="text"/>		
Place of Station:	<input type="text"/>		
Position:	<input type="text"/>		
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>	

General Information Screen

General Information Sheet		GIS No	I-001
Page1 Page2			
Offense Charged (Nature of Offense)	<input type="text"/>		
Brief Description	<input type="text"/>		
Handling IAU	IAU-Region I	Received By:	<input type="text"/>
IAU/Office Endorsed to:	<input type="text" value="IAU-Region 1"/> <input type="text" value="IAU-Region 2"/> <input type="text" value="IAU-Region 3"/> <input type="text" value="IAU-Region 4"/> <input type="text" value="IAU-Region 5"/> <input type="text" value="IAU-Region 6"/> <input type="text" value="IAU-Region 7"/> <input type="text" value="IAU-Region 8"/>	Date Received:	<input type="text" value="mm/dd/yyyy"/>
Please specify:	<input type="text"/>	Date Endorsed:	<input type="text" value="mm/dd/yyyy"/>
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>	

General Information Sheet		GIS No	I-001
Page1 Page2			
Documents Submitted	Filed By		
Letter Complaint	Name: <input type="text"/>		
<input checked="" type="radio"/> Verified <input type="radio"/> Unverified Number of Copies <input type="text"/>	Date: <input type="text" value="mm/dd/yyyy"/>		
<input type="checkbox"/> Certification of Non-Forum Shopping Supporting Documents <input type="text"/> <i>Shift+Enter to go to the next line</i>	Type of Submission		
	<input type="text" value="Walk-in"/> <input type="text" value="Mailed"/> <input type="text" value="Others"/>		
	Specify Others <input type="text"/>		
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>	

Assignment Screen

Docket No. Adm005		Assignment Slip		GIS No. I-001	
Date Assigned:	<input type="text"/>				
Assigned by:	<input type="text"/>				
Re					
Evaluator:	<input type="list" value="1, 2, 3, 4"/>	Hearing Officer:	<input type="list" value="1, 2, 3, 4"/>		
Remarks:	<input type="text"/>				
Prosecuting Officer:	<input type="text"/>				
<input type="button" value="Exit"/>		<input type="button" value="Save and Continue"/>			

Evaluation Screen

Evaluation		GIS No. I-001	
Type of Respondent <input checked="" type="radio"/> SSR <input type="radio"/> SSP <input type="radio"/> PN <input type="radio"/> SPCO <input type="radio"/> RP <input type="radio"/> IAUM <input type="radio"/> SSN <input type="radio"/> PR <input type="radio"/> CPN <input type="radio"/> SDSP <input type="radio"/> PG <input type="radio"/> IAUC			
Statement of Complaint <input type="text"/>			
Evaluation Reset <input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation <input type="radio"/> Preliminary Conference <input type="radio"/> No Action Taken			
Justification <input type="text"/> Recommended by: <input type="text"/> Date: <input type="text"/>			
Reviewed by: <input type="text"/> Date: <input type="text"/> <input type="radio"/> Approved <input type="radio"/> Disapproved Reset			
Justification, if disapproved <input type="text"/>			
Action to be taken <input type="radio"/> Dismissal of Complaint			
Recommending Approval by: <input type="text"/> Date: <input type="text"/> <input type="radio"/> Approved <input type="radio"/> Disapproved Reset			
Justification, if disapproved <input type="text"/>			
Final Approval by: <input type="text"/> Date: <input type="text"/> <input type="radio"/> Approved <input type="radio"/> Disapproved Reset			
Justification, if disapproved <input type="text"/>			
Action to be taken <input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation <input type="radio"/> Preliminary Conference <input type="radio"/> No Action Taken			
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>	

Preliminary Conference Screen

Type of Resp SSR		Preliminary Conference		GIS No. I-001	
Results of Conference		Recommending Approval by: <input type="text"/>		Date: <input type="text"/>	
<input type="text"/>		<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Justification, if disapproved	
Action to take		Justification, if disapproved		<input type="text"/>	
<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation Reset		Action to be taken		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation	
Justification		Recommended by: <input type="text"/>		Date: <input type="text"/>	
<input type="text"/>		Reviewed by: <input type="text"/>		Date: <input type="text"/>	
<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Final Approval by: <input type="text"/>		Date: <input type="text"/>	
Justification, if disapproved		<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Justification, if disapproved	
<input type="text"/>		Justification, if disapproved		<input type="text"/>	
Action to be taken		Action to be taken		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation	
<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Preliminary Investigation	
Exit		Save & Continue			

Preliminary Investigation Screen

Docket No. Adm005	Type of Resp SSR	Preliminary Investigation		GIS No. I-001	
Results of Investigation		Recommending Approval by: <input type="text"/>		Date: <input type="text"/>	
<input type="text"/>		<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Justification, if disapproved	
Action to Take		Justification, if disapproved		<input type="text"/>	
<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension Reset		Action to be taken		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension	
Justification		Recommended by: <input type="text"/>		Date: <input type="text"/>	
<input type="text"/>		Reviewed by: <input type="text"/>		Date: <input type="text"/>	
<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Final Approval by: <input type="text"/>		Date: <input type="text"/>	
Justification, if disapproved		<input type="radio"/> Approved <input type="radio"/> Disapproved Reset		Justification, if disapproved	
<input type="text"/>		Justification, if disapproved		<input type="text"/>	
Action to be taken		Action to be taken		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension	
<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension		<input type="radio"/> Dismissal of Complaint <input type="radio"/> Formal Charge, without preventive suspension <input type="radio"/> Formal Charge, with preventive suspension	
Exit		Save & Continue			

Formal Investigation Screen

Formal Investigation

Docket No. **Adm005**Type of Resp **SSR**GIS No. **I-001**

Results | Review | Final |

Results of Investigation

Action to Take

<input type="radio"/> Dismissal of Complaint	<input type="radio"/> Suspension	Duration <input style="width: 50px;" type="text"/>
<input type="radio"/> Admonition, warning or censure	<input type="radio"/> Forced Resignation	
<input type="radio"/> Reprimand	<input type="radio"/> Dismissal from Service	Reset

Justification

Recommended by: Date:

Formal Investigation

Docket No. **Adm005** Type of Resp **SSR** GIS No. **I-001**

Results Review **Final**

Reviewed by: Date:

Approved Disapproved [Reset](#)

Justification, if disapproved

Action to be taken

Dismissal of Complaint Suspension Duration

Admonition, warning or censure Forced Resignation

Reprimand Dismissal from Service

Recommending Approval by: Date:

Approved Disapproved [Reset](#)

Justification, if disapproved

Action to be taken

Dismissal of Complaint Suspension Duration

Admonition, warning or censure Forced Resignation

Reprimand Dismissal from Service

Formal Investigation

Docket No. **Adm005** Type of Resp **SSR** GIS No. **I-001**

Results Review **Final**

Final Approval by: Date:

Approved Disapproved [Reset](#)

Justification, if disapproved

Action to be taken

Dismissal of Complaint Suspension Duration

Admonition, warning or censure Forced Resignation

Reprimand Dismissal from Service

Approval by the President of the Philippines Date:

Approved Disapproved [Reset](#)

Justification, if disapproved

Action to be taken

Dismissal of Complaint Suspension Duration

Admonition, warning or censure Forced Resignation

Reprimand Dismissal from Service

Resolution Screen

Docket No.	Adm005	Resolution	GIS No	I-001
Resolution				
Suspension				
Duration: 2 days				
Promulgating Office				
<input type="radio"/> Office of the Secretary		<input type="radio"/> Office of the Regional Prosecutor	Region:	<input type="text"/>
<input type="radio"/> Office of the President of the Philippines		Reset		
Date of Letter of Dismissal: <input type="text"/>				
Date of Resolution: <input type="text"/>				
Date of AO (Imposing the penalty): <input type="text"/>				
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>		

Reconsideration Screen

Docket No.	Adm005	Reconsideration	GIS No	I-001
Date of Filing: <input type="text"/>				
Party Filing				
Name: <input type="text"/>				
Address: <input type="text"/>				
Resolution				
<input type="radio"/> Dismissal of Complaint		<input type="radio"/> Dismissal of Charge	<input type="radio"/> Admonition, Warning, Censure	Reset
Penalty of:				
<input type="radio"/> Reprimand		<input type="radio"/> Suspension	Duration: <input type="text"/>	
<input type="radio"/> Forced Resignation		<input type="radio"/> Dismissal from Service		
Resolving Office				
<input type="radio"/> Office of the Secretary		<input type="radio"/> Office of the Regional Prosecutor	Region:	<input type="text"/>
Resolving Authority: <input type="text"/>		Reset		
Date of Memorandum: <input type="text"/>				
<input type="button" value="Exit"/>		<input type="button" value="Save & Continue"/>		

Report Menu

Management Reports

Status Summary	Reconsidered	Imposed Suspension
Individual Status	Imposed Admonition, Warning or Censure	Imposed Forced Resignation
Received	Dismissed	Imposed Dismissal from Service
Docketed	Imposed Penalty	Assignment Monitoring
Endorsed	Imposed Reprimand	Evaluator Assignment
Exit		

Report Sample

Complaint Status Summary		
As of: 10/23/2012 16:31 IAU-Region I		
GIS No	Docket No	Status
I-001	Adm005	MR Resolved
I-002		Prelim Conf Done
I-003		MR Resolved
I-004	Adm001	MR Resolved
I-005	Adm006	Resolved
I-006	Adm007	Resolved
I-007	Adm008	Resolved

Complaint Status Report

As of: 10/23/2012 16:32

IAU-Region I

GIS #: I-001

Complainant: CompLName1, CompFName1

Respondent: RespLName1, RespFName1

Docket #: Adm005

Nature of Complaint: Nature of Offense

Date Filed: 1/1/2012

Date Received: 1/1/2012

Date Assigned for Evaluation: 1/2/2012

Evaluator: Member1

Evaluation - Initial: Preliminary Investigation

Evaluation - Prelim Conference: Dismissal of Complaint

Date of Prelim Conference Report: 2/2/12

Date of receipt of Counter-affidavit:

Evaluation - Prelim Investigation: Formal Charge Without Preventive Suspension

Date of Prelim Investigation Report: 3/3/12

Date of Formal Charge: 2/2/12

Nature of Formal Charge: Bribery

Date of receipt of Answer to Formal Charge:

Hearing Officer: Member2

Prosecuting Officer: RP Juan

Date of formal Admin Hearing:

Date of formal Investigation Report: 2/2/12

Resolution - Formal Investigation: Suspension 2

Date of Resolution: 4/4/12

Promulgating Office: ORP

Date of receipt of Motion/Pleading: 1/2/12

Date of Resolution of Motion: 5/5/12

Complaints Received				
As of : 10/23/12 16:33 IAU-Region I				
GIS Number	Date Received	Date Filed	Complainant Name	Respondent Name
I-001	1/1/2012	1/1/2012	CompLName1, CompFName1	RespLName1, RespFName1
I-002	2/2/12	2/2/12	j, j	k, k
I-003	2/2/12	3/3/12	o, o	p, p
I-004	1/1/12	1/1/12	jardin, jose	David, Pedro
I-005	1/1/12	1/1/12	Santos, Jake	Carpio, George
I-006	3/3/12	3/4/12	Gonzales, Karen	Roque, Armando
I-007	3/3/12	3/3/12	Austria, Jon	Galang, Roy

Docketed Complaints							
As of : 10/23/2012 16:33 IAU-Region I							
GIS Number	Docket Number	Date Docketed	Nature of Charge	Resolution	Result of MR	Complainant Name	Respondent Name
I-001	Adm005	3/3/12	1234589	Suspension2	Reprimand	CompLName1, CompFName1	RespLName1, RespFName1
I-004	Adm001	1/3/12		Admonition	Admonition	jardin, jose	David, Pedro
I-005	Adm006	2/6/12		Suspension5		Santos, Jake	Carpio, George
I-006	Adm007			Forced Resignation		Gonzales, Karen	Roque, Armando
I-007	Adm008	3/7/12		Dismissal from Service		Austria, Jon	Galang, Roy

Complaints Endorsed			
As of: 10/23/2012 16:35 IAU-Region I			
GIS Number	IAU/Office Endorsed To	Office Details	Date Endorsed
I-005	IAU-Region 2		1/2/12

Complaints Reconsidered

As of: 10/23/2012 16:35
IAU-Region I

GIS Number	Date Filed	Result of MR	Date of Memo
I-001	1/2/12	Reprimand	5/5/12
I-003	4/4/12	Dismissal of Complaint	6/6/12
I-004	3/2/12	Admonition	4/4/12

Complaints Imposed AWC

As of : 10/23/2012 16:35
IAU-Region I

GIS Number	Date Received	Date of Resolution	Date of MR	Promulgating Office	Respondent Name
I-004	1/1/12	6/6/12	4/4/12	OS	David, Pedro

Complaints Dismissed

As of : 10/23/12 16:36
IAU-Region I

GIS Number	Date Received	Resolution	Resolution Date	MR	MR Date	Complainant	Respondent
I-002	2/2/12	Dismissal of Complaint				j, j	k, k
I-003	2/2/12	Dismissal of Complaint		Dismissal of Complaint	6/6/12	o, o	p, p

Complaints Imposed Penalty

As of: 10/23/2012 16:36
IAU-Region I

GIS Number	Docket Number	Nature of Charge	Resolution	Resolution Date	MR	MR Date	Promulgating Office	Complainant	Respondent
I-001	Adm005	Bribery	Suspension	4/4/12	Reprimand	5/5/12	ORP1	CompLName1, CompFName1	RespLName1, RespFName1
I-005	Adm006	Incompetence	Suspension	2/14/12			OP	Santos, Jake	Carpio, George
I-006	Adm007	Harassment	Forced Resignation	4/8/12			OP	Gonzales, Karen	Roque, Armando
I-007	Adm008	Extortion	Dismissal from Service	3/12/12			OS	Austria, Jon	Galang, Roy

Complaints Imposed Reprimand									
As of: 10/23/2012 16:37 IAU-Region I									
GIS Number	Docket Number	Nature of Charge	Resolution	Resolution Date	MR	MR Date	Promulgating Office	Complainant	Respondent
I-001	Adm005	Bribery	Suspension	4/4/12	Reprimand	5/5/12	ORP1	CompLName1, CompFName1	RespLName1, RespFName1

Complaints Imposed Suspension									
As of: 10/23/2012 16:37 IAU-Region I									
GIS Number	Docket Number	Nature of Charge	Resolution	Resolution Date	MR	MR Date	Promulgating Office	Complainant	Respondent
I-005	Adm006	Incompetence	Suspension	2/14/12			OP	Santos, Jake	Carpio, George

Complaints Imposed Forced Resignation									
As of: 10/23/2012 16:37 IAU-Region I									
GIS Number	Docket Number	Nature of Charge	Resolution	Resolution Date	MR	MR Date	Promulgating Office	Complainant	Respondent
I-006	Adm007	Harassment	Forced Resignation	4/8/12			OP	Gonzales, Karen	Roque, Armando

Complaints Imposed Dismissal from Service									
As of: 10/23/2012 16:38 IAU-Region I									
GIS Number	Docket Number	Nature of Charge	Resolution	Resolution Date	MR	MR Date	Promulgating Office	Complainant	Respondent
I-007	Adm008	Extortion	Dismissal from Service	3/12/12			OS	Austria, Jon	Galang, Roy

Assignment Monitoring Report

Date: 10/23/12 16:38
IAU-Region I

GIS Number	Date Received	Assigned Evaluator	Date Assigned
I-001	1/1/2012	Member1	1/2/2012
I-002	2/2/12	Member2	2/3/12
I-003	2/2/12	Member3	3/4/12
I-004	1/1/12	Member4	1/2/12
I-005	1/1/12	Member2	2/2/12
I-006	3/3/12	Member3	3/5/12
I-007	3/3/12	Member4	3/4/12

Evaluator Assignment Report

As of: 10/23/2012
IAU-Region I
Evaluator: 1

GIS No	Date Received	Date Assigned	Evaluator Name
I-001	1/1/2012	1/2/2012	Member1

SUMMARY OF IAU SURVEY RESULTS

1. IAU Office Address:

R1: DOJ, Regional Prosecution Office No. 1, Sevilla, San Fernando City, La Union
 R2: ORP-HALL OF JUSTICE, CARIG, TUG. CITY
 R4: ORP- Region IV, DOJ Bldg., San Pablo City
 R6: ORP, Ilo-Ilo Sports Complex, Ilo-Ilo City
 R7: ORSP 7 2nd Floor Palace of Justice, Capitol, Cebu City
 R8: ORP 8 Tacloban City
 R10: Regional Prosecution Office 10, Rm. 223, Hall of Justice, Hayes Street, Cagayan de Oro City
 R13: ORP CARAGA HALL OF JUSTICE, LIBERTAD BUTUAN CITY
 R14 (ARMM): ORP, Region XIV (ARMM), Hall of Justice, Marawi City

2. Month and year of start of IAU operation:

R1: December 2011
 R2: August 2011
 R4: March 30 2011
 R6: September 2011
 R7: Roughly 8 months
 R8: March 2012
 R10: October 2011
 R14: None

3. Monthly average number of IAU cases:

R1: Received: 2	Resolved: 2	Dismissed:	Charged: 2
R3: Received 12	Resolved:	Dismissed:	
R4: Received: 1	Resolved: 1	Dismissed:	Charged: 0
R6: Received: 1	Resolved: 1	Dismissed:	Charged: 1
R7: Received: 4	Resolved:	Dismissed:	Charged:
R8: Not yet, can't estimate percentage.			
R10: Received: 2	Resolved: 2	Dismissed: 2	Charged: 0
R13: Received: 1	Resolved:	Dismissed: 1	Charged: 0
R14: Received: none	Resolved: none	Dismissed: none	Charged: none

Penalized (Reprimand/suspension/forced resignation/fine/dismissal from service):

R1: None yet
 R4: 0
 R6: Dismissal
 R10: None
 R14: None

4. What are the criteria used for selecting:

IAU Members:

R1: probity, integrity and independence

R2: probity, impartiality and dedication to the service

R4: Membership within the ORP

R6: Integrity, competence, diligence, probity

R8: Competence, integrity, probity and geographical location

R10: Competence, independence, probity and proven track records.

R14: Competence, Impartially, and infeasibility to easily carry the IAU

IAU Admin Staff:

R1: not applicable

R2: probity and dedication to the service

R4: Integrity, honesty & competent

R6: Integrity, Legal experience, Diligence, Efficiency

R7: Currently there are no IAU Staff

R8: No assignment yet.

R10: Competence, reliability and aptitude.

R13: No

R14: Ability, competence, educational background and experience in Administrative works.

5. Have you designated dedicated IAU Administrative staff? If yes, what are the criteria?

R1: No, because no available staff, we just utilized our regular staff

R2: Yes

R4: Not yet

R6: Yes, above statement

R7: Not yet

R8: No designation yet.

R10: In view of our shortage of support Staff in the Regional Office, I designated our Asst. Admin Staff to act as IAU staff on top of her regular duties. Criteria: Competence and ability to maintain confidentiality of records.

R14: Yes. Ability, competence, educational background and experience in administrative works as well as dedication to work and honesty.

6. Period/Duration of IAU assignment (in years, months, etc. as applicable) for:

R1: IAU Chairperson: permanent

IAU Member: until revoked

IAU Admin Staff: no one is designated

R2: IAU Chairperson: 2 Years

IAU Member: 2 Years

IAU Admin Staff: 2 Years

R4: IAU Chairperson: Automatic Designation

IAU Member: to be designated by SOJ upon recommendation of RP.

- IAU Admin Staff: to be designated by SOJ upon recommendation of RP.
- R6: IAU Chairperson: 9 months
 IAU Member: 9 months
 IAU Admin Staff: 9 months
- R7: IAU Chairperson: vacant
 IAU Member:
 IAU Admin Staff:
- R8: IAU Chairperson:
 IAU Member: 3 years
 IAU Admin Staff: 3 years
- R10: IAU Chairperson: 8 months
 IAU Member: 8 months
 IAU Admin Staff: 8 months
- Note: Based on the recent operationalization of the IAU per D.O. 768, August 2011
- R13: IAU Chairperson:
 IAU Member:
 IAU Admin Staff:
- R14: IAU Chairperson: 1
 IAU Member: 4
 IAU Admin Staff: 1

7. For IAU Chairperson and Members:

- a. Monthly average number of IAU cases that can be handled on top of regular duties
(i.e., based on your personal assessment of IAU member capacity)

- R1: 2
 R2: (1)
 R4: 2 cases per month
 R6: So far, only one case was received
 R8: 5 cases
 R10: 3-4 IAU cases
 R14: 20

8. In cases where more complaints were handled than capacity, what strategies do you think should you used to deliver service?

- R1: have not yet encountered
 R2: It is only matter of time management barring unforeseen events
 R4: even distribution of the complaints to the members
 R6: This question is inapplicable for the moment. But in case it will happen; we believe DOJ should increase existing manpower, otherwise the resolution of complaint will be delay.
 R8: Reassignment of case to another IAU member.
 R10: So as not prejudice public service (as an IAU member is also performing his/her regular functions) it is important that the assignment of IAU cases for investigation must be done by considering first the prevailing caseload of such IAU member.
 R14: Prompt and deliberate actions on the complaint.

9. Who/what unit is responsible for monitoring the following turnaround time for the various phases of a complaint resolution?

Table 1

Task	Turnaround Time	Responsible Personnel
Conveyance of complaint to IAU	24 hours	Receiving/Docket Officer
Evaluation of complaint	Within 5 days from receipt of complaint	IAU member
PCPIAA	Within 60 days from filing of complaint	IAU member
Notification of respondent of complaint against him/her	Within 5 days from receipt of records	IAU member
Issuance of formal charge	Within 5 days after SOJ or Regional Prosecutor approval	
Case resolution	Within 20 days from termination of formal administrative hearing	IAU member
Forwarding of case resolution, with comments, to SOJ, PG, or Regional Prosecutor	Within 10 days from receipt of case resolution	IAU Chairperson

10. Have there been concerns in meeting **any** of the lead time enumerated in Table 1? What are they?

R1: Format of notice, resolution and formal charge

R2: None

R4: initially to meet the deadline because of conflicting schedule and time constrains

R6: So far in the assignment, evaluation and notification stages there has been no problem encounter as yet. However, in the Administration Adjudication, (including prelim conf. Prelim Inv. Stages) considering the availability of all the IAU members who are far from ORP, and so heavily burdened with their regular duties, the 60 days period are unrealistic.

R7: At present, there are no existing IAU staff, save the regular offices staff of ORSP 7. Since the retirement of DRP Mañalac the complaints have only been received because under the law, only the chairperson can assign them.

R8: None so far.

R10: Since our regional IAU is fairly recent and there were only three cases filed, evaluated and decided by the IAU members so far, there has been no problem in meeting any of the mandated lead time as enumerated.

R14: Not yet.

11. What have been done to address these concerns? What could have prevented the concern from happening?

R1: Drafted uniform format. There should have been sample formats

R2: N/A

R4: Periodic meetings

R6: In our first case, the initial stages above described were expeditiously accomplished. But the aim adjudication could not been started and concluded because there was an interviewing circumstance. The AWOL of the respondent and her being dropped from the rolls of employees.

R7: Regional Prosecutor already made a recommendation for the appointment of an Acting Chairperson. On the other hand, it is also improvable to extend additional.

R8: None so far.

R10: There has been no particular concern relative to this matter.

R14: Further information shall be disseminated and constant meeting of IAU regarding values complaint.

12. What are the sanctions for not meeting the service level indicated in Table 1?

R1: none yet

R2: Reprimand

R4: No sanctions usually reminders are sufficient

R6: There are no sanctions if the delay is deliberate on the part of IAU members, since the codes has on provisions. However, the aggrieved party may file motion to Expedite proceedings copy furnished RP and the OSG/OPG.

R7: Tasks to existing ORSP 7 staff to handle IAU administration matters because of the volume of work, considering that the ORSP 7 is presently under manned.

R8: Reassignment to another

1. Warning

2. Removal from IAU.

R10: I would suggest that the IAU chairperson take an active role in seeing to it that the lead times are properly observed. In case of delay, the attention of the concerned IAU member must be called so that the complaint will be disposed according to our timetable.

R14: The penalties for administrative offenses based on the law violated, e.g. Civil Service Law

13. Who/what unit provides information with the complainants who follow up on the progress of a complaint?

R1: Staff

R2: IAU Admin Staff

R4: The Chief of office where the respondent is assigned

R6: In the present case, the Chairman communicates with the complainant who is a superior of the respondent, as to availability of hearing dates.

R7: At present, there are no staffs assigned to the IAU. The cases received have been docketed only by the

R8: Admin Staff

R10: Follow-ups or queries made by any party to the complaint may be addressed to the IAU staff.

14. Who/what unit is responsible for tracking the progress of a complaint handled by IAU?

R1: IAU Chairperson and members

R2:IAU Admin Staff

R4: IAU Chairperson and IAU Staff

R6: Should be the Chairman, because his Chairmanship makes him accountable.

R8: Admin Staff/Chairperson

R10: In our region, the Acting Chairperson and the IAU Staff I monitor the status and progress of the complaint handled by the IAU.

15. What are the milestones tracked?

R1: receipt of answer or counter-affidavits, issuances of notices, resolutions and formal charges

R2: Case Resolution

R4: 1. Period elapsed from time complaint was received each assignment to members

2. Period of Evaluation

3. Period of resolution and recommendation

R6: In our experience with one (1) case, not necessary. But if the cases becomes voluminous, the circuitous procedure should have built in tracking system.

R8: Date of filing of complaint. Date assigned to member of evaluation/notification, date of PCPIAA/Resolution.

R10: Date of filing; date of assignment to IAU member; result of initial evaluation; subpoena/notifications; result/recommendation on investigation; case resolution and subsequent actions (e.g. forwarding the records to DOJ proper in cases where the respondent is a prosecutor.

16. What sources of information are used as bases for tracking these milestones?

R1: Logbooks, discussion / consultations

R2: Records of the case under Investigation

R4: Personal Inquiry

R6: No actual experience yet.

R8: The records/ Case folder

R10: Sources: as to relevant dates to determine the lead time, the IAU docket system maybe used personal verification with the handling IAU member may also be used to track the milestones.

17. How are these sources of information obtained?

R1: verifications with IAU Staff, Discussion / Consultation among IAU Chairperson and members, and regional Prosecutor

R2: By simply going over the records of the case

R4: Through discrete interviews & inter-office memorandums

R6: Same as above

R8: Records Checking

R10: By referring to the docket books and the documents in the case records.

18. What forms are used to document the following (please attach a sample form)?

a. Initial receipt of a complaint

R1: Stamp

R4: Office Logbooks

R6: Complaint is just simply received.

R7: No prescribed forms yet.

R8: Checklist

R10: Note: We have not prescribed a specific form for each stage or actions. Please see attached form/s which we have available thus far. Since no formal charged has yet been made on any respondent/s subject of a complaint before the IAU in our region, we have none available yet, but in the event that there will be one, the IAU will use the standard format prescribed under CSC rules and regulations until such time that there will be one standard form prescribed by the DOJ for all IAUs.

R13: None

b. Subsequent receipt of other documents related to the complaint

R1: Stamp

R4: Office Logbooks

R6: Pls. See attached

R7: The IAU 7 was informed that uniform forms will be provided by the central office (in Manila) so as to meet uniformity procedures, as of the present, no form were provided yet. Further, no complaints were as yet indorsed to the IAU members for evaluation/ formal charge/P.I. or A.A because of the recent retirement and vacancy of the Chairperson. (Answer from A-K)

R8: Checklist

R13: None

c. Assignment of complaint

R1: Logbook

R4: Inter-office Memorandum

R6: (summary of assigned cases for evaluation)

R8: Routing Slip

R13: None

d. Result of evaluation

R1: Letter Form

R4: Also by way & Inter-office Memorandum

R6: Evaluation are filed and recorded as to compliance to period.

R8: Evaluation Report

R13: None

e. Issuance of notices, interlocutory orders to outside parties

R1: Notice

R4: Subpoena

R6: No actual experience as yet

R8: Letter

R13: None

- f. Interoffice/intra-office transfer of case records and communication
 - R1: Logbook
 - R4: Logbook & memorandum
 - R6: No actual experience as yet
 - R8: Routing Slip
 - R13: None

- g. Formal charging
 - R1: Memorandum / Subpoena type
 - R4: by way of memoranda/official letter
 - R6: No actual experience. Except that in our first case the complainant CP, was the one formally charged.
 - R8: Found Charge
 - R13: None

- h. Dismissal of complaint
 - R1: Resolution
 - R4: by way of memoranda/official letter
 - R6: The respondent (which is a better simpler practice) no experience
 - R8: Resolution
 - R13: None

- i. Imposition of penalty
 - R1: None Yet
 - R4: by way of memoranda/official letter
 - R6: No experience
 - R8: Resolution
 - R13: None

- j. Resolution of a motion
 - R1: None Yet
 - R4: by way of memoranda/official letter
 - R6: No experience
 - R8: Resolution
 - R13: None

- k. Others
 - R4: by way of memoranda/official letter
 - R6: Not necessary
 - R13: None

19. Please describe your step-by-step procedure for receiving a complaint for the first time.

R1: Upon receipt, complaint is evaluated and recommendations are made. Notice will be sent to respondent. Upon receipt of answer, investigation ensues after which, a resolution is issued.

R2: Upon receipt of the Complaint, it shall be docketed with corresponding docket number and other details of the case indicated. A case folder is prepared that includes the complaint and exhibits. "Paging" must be done and number of pages indicated.

R4: 1. Receiving clerk log the complaint in the incoming logbook.

2. Receiving clerk will forward it to the secretary of Regional Prosecutor.

3. Routing Slips shall be attached and forwarded to Administrative Officer for docketing.

4. Document shall be forwarded to Regional Prosecutor for his information

5. Regional Prosecutor shall transmit the complaint to Deputy Regional Prosecutor (IAU Chairperson) for disposition.

R6: The complaint is officially received and docketed, and assigned. A case number after the complaint is assigned to a member for evaluation, reminding the period to submit evaluation report. The assignment is recorded in the summary and the evaluation report is filed.

R7: However, with the just recent designation of ARP Elmido as acting Chairperson, it is expected that the complaints will take its due course.

R8: Once the case has been referred to the IAU, it is immediately assigned to an IAU member for evaluation. The IAU member then would send notice to the respondent.

R10: Upon receipt of a complaint the IAU Staff shall immediately assign a docket number to the complaint and record in the IAU Docket book. We use to format for numbering: ADM-RPO X-12-00

R13: When the complaint was received, it was recorded and was assigned to the prosecutor for evaluation and for resolution the assigned prosecutor would confer with the other IAU members and would solicit recommendations for a final resolution/ decisions.

20. Please describe your step-by-step procedure for the subsequent receipt of other case-related documents.

R1: Subsequent documents are immediately attached to the record and likewise evaluated

R2: Additional Exhibits form must be accomplished, and the exhibits shall be attached to the records of the case with the corresponding pages.

R4: same as above

R6: No experience but thanks for this reminder.

R7: After receipt of the documents, it is indorsed to the Chairperson by the receiving clerk. After an initial evaluation the complaint and its attaching documents is their indorsed to the handling member.

R8: Subsequent documents are referred to assigned IAU member handling the case.

R10: Any document/s that would be filed or submitted by any party to the case while the same is pending before the IAU shall be received by the IAU Staff and transmitted to the Chairperson or Member, as the case may be.

R13: Upon receipt of other case-related documents the in-charge prosecutor would again confer with other IAU members to resolve.

21. What processes are in place to control mailed complaints and ensure that they are actually received in the system?

R1: Stamp received, logged and forwarded immediately to IAU Chairperson for assignment to IAU member

R2: Upon receipt of mailed Complaint, a control number is assigned and docketed. The date of receipt is indicated. Notice send to the complainant for his appearance before the office for the purpose of accomplishing the Investigation Data Form.

R4: same process

R6: Complaints are immediately received with the date and time recorded. Staff is then directed to inform all members by phone and the member whom it will assign for evaluation.

R7: After receipt of a mailed complaint, it is docketed and indorsed to Chairperson for initial valuation after which the complaint is

R8: All mailed complaints are receive the docket clerk then referred to the I.P for assignment referred to the chairman if IAU case.

R10: The Office of the designated receiving clerk who is responsible in receiving on incoming communications and transmitting out going mails/communications. All incoming communications shall be routed accordingly so that all IAU matters shall be immediately forwarded to the designated IAU Staff.

R13: Proper recording and complaint should received by the IAU member in-charged/ assigned.

22. Please describe your step-by-step procedure for conveying the complaint initially received, as well as the other documents subsequently received, to the pertinent IAU, in the case where:

a. Receiving office and the IAU office are in the same location/premises

R1: Complaint received are immediately forwarded to the Chairperson who assigns the case within 24 hours to IAU members

R2: After docketing the Complaint just received, the IAU Staff shall now refer the case to the Chairman. The latter shall then assign the case to anyone among the IAU members.

R4: The office personally received the complaint.

R6: The complaint upon receipt is marked received docketed and the system of automatic assignment to Memo-Order no. 0001 comes into play. Same is recorded into the summary and all the members are notified especially the evaluation.

R7: Ideally, the records are hand-carried to the IAU Office.

R8: After the complaints have been entered in the docket and given a number for P.I the same is referred the IAU chairperson then assigned a member for evaluation.

R10: After the complaint has been docketed by the IAU Staff, she will immediately turn over the same to the Acting Chairperson for Assignment to an IAU member for initial evaluation.

If there are other documents subsequently received in relation to a complaint pending evaluation/investigation, the same shall be transmitted to the Acting Chairperson who shall then instruct the IAU to forward the same to the concerned IAU member.

R13:

b. Receiving office and the IAU office are in different geographical location

R1: N/A

R2: If the receiving office is not so distant from the IAU Office, messenger's service may be availed of otherwise, the Postal service may be utilized.

R4: the complaint is usually received by mail but some are personally delivered which would undergo the same process as above upon receipt thereof.

R6: N/A

R7: Depending on the proximity, the documents are hand-carried or transmitted by express courier to avoid delays in ordinary mail. However it is believed that only registered mail is recognized as official transmittal.

R8: N/A

R10: N/A

R13: No

23. What processes are in place for handling out-of-scope cases, i.e., cases supposedly within the jurisdiction of another IAU?

R1: N/A

R2: Just prepare a referral letter to be hand-carried by the complainant to the IAU office which has jurisdiction over the case.

R4: Same as above

R6: In case of wrong venue the complaint should be returned to complainant with the information, where to properly file it.

R7: As official Documents are indorsed to the proper IAU and then transmitted through registered mail.

R8: We have no experience of such case probably send the case folder to the proper IAU of jurisdiction.

R10: In the event that there will be complaints that would turn out to be outside the scope of the jurisdiction of our IAU, the same shall be forwarded to the proper IAU for appropriate action. Parties shall be noticed of such action by furnishing them a copy of the endorsement.

R13: Yes

24. What are the criteria used for assigning a complaint for evaluation?

R1: Equal Distribution

R2: The complaint must be sufficient in form and substance

R4: Complaints are evenly distributed to members of IAU.

R6: Assignment is following a system, where the first 4 complaints will be handled by members in chronological order and the pattern is repeated for subsequent ones.

R7: One consideration is the work load of the concerned IAU member. Another is the proximity of his office.

R8: Geographical location for easy access

R10: Upon receipt of the complaint, the Acting Chairperson shall assign the same to an IAU member who is not from the same office as the respondent-prosecutor or staff complained of in order to insure an impartial evaluation

25. Please describe your step-by-step procedure for assigning complaints.

R1: Complaints are assigned to members equally in equal distribution

R2: Upon receipt of the case folder, letter of assignment is prepared and then conveyed to IAU members.

R4: after the Chairperson receives the complaints the same is assigned to available members within 24 hours from receipt. Preferably, one who has lighter workload at that particular time by memorandum.

R6: Already explained.

R7: Initial evaluation; Endorsement/ assignment to IAU member; whenever practicable, IAU member signs the docket book; records are then transmitted to the member.

R8: once referred to the IAU the complaint is now assigned to a member for evaluation the assignment is based on geographical location for easy access and communication.

R10: After a complaint is received, docketed and received by the Acting Chairperson, she will then determine from among the remaining 3 members as to who shall conduct the initial evaluation of the complaint taking into account the number of IAU cases already assigned to such member. The assignment is made by the Acting Chairperson making an endorsement to the IAU member for the initial evaluation of the complaint.

26. Please describe your step-by-step procedure for re-assigning complaints, if applicable.

R1: First equal distribution, if not possible, through discussion on the reason why it should be assigned to another IAU member

R2: A letter is prepared withdrawing / revoking the assignment made and reassigning the same to another IAU member

R4: in case of reassignment, the original members will have to justify the reassignment and if warranted the complaint shall be reassigned to another member VIA memorandum.

R6: Not necessary. In case of objections, as to outcome Chairman shall resolved.

R8: If for some reason the assigned IAU member cannot act on the complaint the same is reassigned to another IAU member near also by geographical location.

R10: This has not happened in our region yet but in the event that the complaint needs to be reassigned, in cases where the IAU member voluntarily inhibits himself/herself or if the IAU member is being asked to inhibit by any of the parties to the complaint, the records of the case shall be transmitted back to the IAU chairperson for reassignment to another IAU member.

27. If a complaint is evaluated to be for preliminary investigation, is the evaluating IAU member the same as the one to conduct the investigation? If not, please describe your procedures for assigning an investigating IAU member.

R1: Yes

R2: As much as practicable, the IAU member who was assigned to conduct an evaluation of the Complaint should also be the one to conduct the preliminary investigation to avoid disagreement, conflict of opinion and delay.

R4: Yes it is

R6: Preliminary conference is sufficient. Preliminary investigation is to circuitous, and will only result to delay.

R7: Ideally No. The case will be assigned to another member who will then conduct the P.I.

R8: The procedure has to be appreciated in an actual setting. There has been non so far

R10: Yes. It is more applicable to assign the complaint to evaluating prosecutor who is already familiar with facts of the case.

28. Does the IAU have a common set of guidelines/parameters to be used in the evaluation of complaints? If not, what are currently being used?

R1: None. Codes of Conduct

R2: As of the present, there is none. It is a matter of appreciation of evidence especially if documentary exhibits are available.

R4: Yes

R6: Evaluation should be simple. A detailed evaluation is not necessary.

R7: Complaints are to be taken on its face, with primary consideration on the attached evidence if any. It must be considered carefully to prevent "harassment complaints".

R8: The Rules or Criminal Procedure as well as on Administrative Cases.

R10: There is no common set of guidelines in evaluating complaints. Each IAU member shall evaluate the complaint based on her personal appreciation of the facts and circumstances and the merits (or lack thereof) of each complaint applying the relevant laws/rules/regulations.

R13:

29. Please describe your step-by-step procedure for evaluating complaints.

R1: Read allegations in the complaint and scrutinize evidence submitted

R2: First, go over the documentary exhibits. If there are no documentary exhibits, then look into the merits of the allegations contained in the Complaint. If it became clear that it is only a harassment case, then dismissal of the complaint becomes a matter of course.

R4: Main affidavit/complaint letter shall within 5 days form receipt shall be assigned to a member who shall evaluate the same and submit a report to the Chairperson together with his recommendation which may be dismissal or the conduct of investigation of preliminary conference and administrative adjudication.

R6: The evaluation should only conform to Section 6, Part III, of the codes of conduct. Nothing more complicated. Anyway, it will still go through several stages.

R7: Complaints are taken on its face. Then, the attaching evidence in relation thereto is considered.

R8: IAU member studies complaint and evaluates if probable cause is present to warrant for the proceedings. The respondents, required to answer if probable cause is determined if none complaint is dropped even if respondent has not answered or his answer yet to be received. If probable cause is justify formal charge follows.

R10: The concerned IAU member shall evaluate the complaint by reading the complete records of the complaint, including or attachments and on the basis thereof issue a resolution stating if the complaint has merit and warrants further administrative action. If the IAU member recommends for the outright dismissal of the complaint, the records shall be returned to the Acting Chairperson who may or may not agree with the result of the initial evaluation.

30. If the evaluation resulted in recommending an outright dismissal of the complaint, what is the IAU's timeline for issuing a final Letter of Dismissal?

R1: Ten (10) days

R2: Within sixty five (65) days from the filing of the Complaint.

R4: 5 days to forward the letter recommending dismissal.

R6: Outright.

R7: Have not considered yet.

R8: 45 days from assignment to IAU member the letter must be formalized.

R10: If the recommendation for the outright dismissal of the complaint is concurred in by the Acting Chairperson and the RP agrees to the recommendation, the Acting Chairperson shall then prepare a Letter of Dismissal, to be signed by the Regional Prosecutor, addressed to the respondent (support staff of the region), copy furnished the respondent/s to inform him/her of the dismissal of the complaint. This must be done within five (5) days from the rendition of a result of the initial evaluation.

31. Do you have a procedure in carrying out the preliminary conference / preliminary investigation / administrative adjudication? If yes, please describe your step-by-step procedure for undertaking:

a. Preliminary conference

R2: Yes, notices shall be sending to the parties. The date/time and place for the conference are indicated therein. This may be availed of in cases where the parties are relatives such as where the Complainant is the wife of a philandering Prosecutor.

R4: shall be conducted within 60 days from the filing of the complaint. Within 5 days from receipt of records the IAU members shall notify the respondents in writing that the complaint has been filed against him together with attachment the respondent shall have 10 days from receipt of notice within which to submit answer together with his own attachments.

R6: Not Yet.

R7: It is presumed that the procedure would be akin to a regular P.I.

R8: None so far.

R10: No procedures in place. We will follow the CSC uniform rules in administrative cases until such time that the IAU shall have uniform procedures to be followed.

b. Preliminary investigation

R1: Evaluated the Complaint vis-a-vis the evidence submitted

R2: A similar Notice may be send to the Complainant only.

R4: same

R6:Not Yet.

R8: N/A

R10: No procedures in place. We will follow the CSC uniform rules in administrative cases until such time that the IAU shall have uniform procedures to be followed.

c. Administrative adjudication

R1: Have not encountered yet because since the implementation of the IAU just reach the level of recommending formal charging.

R2: An adjudicator may be appointed from among the IAU members.

R4: same

R6: Not Yet.

R8: N/A

R10: No procedures in place. We will follow the CSC uniform rules in administrative cases until such time that the IAU shall have uniform procedures to be followed.

32. How does the IAU know of any previous instances of charges against the respondent?

R1: Logbook and information supplied by the Complainant or the respondent.

R2: By going over the docket or if need be, require respondent submit clearances.

R4: By verifying the same with the office where he is currently assigned and where he was previously assigned from the DOJ Head Office.

R6: IAU, will only rely on the certification of non-forum shopping.

R8: Records checking and referral to other units like DOJ proper or Ombudsman.

R10: Since there is one docketing system for all complaints before the IAU in our region, any previous administrative charge/s may be verified by referring to the docket kept in the regional office.

R13: The assigned prosecutor would call for a conference with the other IAU members.

33. How is the review/concurrence process carried out in cases where SOJ, PG, Regional Prosecutor, IAU Chairman, IAU Member are in geographically different locations?

R1: N/A

R2: Through the use of modern technology such as e-mail.

R4: There has to a designated procedures & routing of the records to various office concerned for concurrence suggested. E-mail concurrence could also be availed of.

R6: In case of Region 6, SOJ and PG are far. Just like other 4 members. Concurrences with members are secured by phone. Signature will just follow.

R8: Send through mail.

R10: This shall be done by transmitting the records of the case (with the regional office retaining a file copy) by way of endorsement to the SOJ for review/concurrence of IAU actions. The same procedure shall be observed if the initial action comes from an IAU member who is from an office outside Cagayan de Oro City and needs the review/concurrence of the Acting Chairperson or Regional Prosecutor.

34. How has the IAU ensured the security of documents and records in transit?

R1: N/A

R2: Documents must be scanned first before they are sending in Registered Mails.

R4: We have to rely with the postal services. But the records are properly sealed.

R6: Complete reliance on the postal system. No. control on that.

R8: Sending through mail is preferable to personal delivery.

R10: Since we rely on the local post offices for transmission of documents, we will send the same by registered mail and note the registry receipt number and day of mailing are in our dockets.

R13: Properly sealed and a return registry receipt was attached.

35. How is an originating IAU apprised of the final decision on a complaint?

R1: N/A

R2: Through Registered Mail or e-mail.

R4: We shall receive the official letter coming from the higher office which would either a firm or modify original IAU.

R6: No way except by actual notice.

R8: The IAU is furnished a copy of the resolution.

R10: I suggest that the originating IAU be apprised of the final decision by furnishing it a copy of the final action taken by the SOJ.

36. Does the IAU have its own administrative staff? If yes, what are its responsibilities?

R1: None

R2: It may be a good idea to give job to the civil service eligible's who cannot job.

R4: None yet.

R6: Yes.

1. Receiving, docketing, recording.
2. Notifying members, as the directed by Chairman.
3. Typing of orders, issuances, evaluation, decision.
4. Transcribing.

R7: Not yet.

R8: None.

R10: Due to lack of office staff in the regional office, the IAU Staff is designated from among the support staff in the office who shall receive and docket IAU complaints in addition to its regular duties and functions.

R13: No

37. Please describe your step-by-step procedure for:

a. Temporarily safekeeping the case records within the period allowed to make a motion for reconsideration

R1: Keeping in steel cabinet.

R2: The records of the case may be kept in a separate filing cabinet.

R4: It stays with the IAU period of 10 days.

R6: No actual experience yet.

R7: Copy of the records will be place in the designated filing cabinet.

R8: The records are temporarily kept by the chairperson.

R10: Temporarily safe keeping the case record within the period allowed to make a motion for reconsideration, to allowed parties make a motion for reconsideration, the case records shall be kept by the IAU Staff in the Office safe.

b. Safekeeping the case records pertaining to resolved cases

R1: Keeping in steel cabinet.

R2: Resolved cases may be kept in a separate filing copy for a period of ten (10) years.

R4: After resolution of a particular complaint the entire records shall be forwarded to the IAU Staff for safekeeping until final resolution of the case has been approved of the higher offices.

R6: They should be secured in a steel cabinet, the keys are with the Chair.

R7:

R8: Resolved cases are kept by the Admin Staff assigned to IAU.

R10: Resolved IAU cases shall be kept in a safe place under lock and key.

R13:

38. Who resolves a motion for reconsideration?

R1: Have not encountered yet.

R2: In case where prosecutors/ officials are the respondents-the Secretary of Justice. Rank and file cases may be resolved by the Regional Prosecutor.

R4: Regional Prosecutor which maybe filed within 15 days upon receipt a copy of decision.

R6: No experience yet.

R8: It is resolved by the handling IAU member.

R10: The same IAU member who resolved the complaint unless there is a good reason to assigned the resolution of the MR to another member.

R13: The assigned IAU member (prosecutor).

39. Please describe your step-by-step procedure for resolving a motion for reconsideration.

R1: Have not encountered yet.

R2: Upon receipt of the M.R., the Admin. Staff shall refer the same to the IAU Chairman who shall in turn refer it to the Regional Prosecutor.

R4: The motion for reconsideration shall be resolved within 15 days from the filing thereof, second motion for reconsideration shall not be entertained.

R6:No experience yet.

R8: If the motion is received by the docket clerk it is referred to the Admin Staff assigned to IAU then referred to the IAU member handling the case for resolution.

R10: Upon receipt of a motion for reconsideration, the IAU staff shall note the same in the docket book and transmit it to the Acting Chairperson who shall forward the same to the IAU member who resolved the original complaint for his/her resolution.

R13: Recorded in a logbook, give the motion for recon to the assigned prosecutor.

40. Thus far, what problems have you encountered in your operation of the IAU?

R1: Lack of implementing rules and guidelines, no available staff to be assigned (we are utilizing our regular staff in addition to their regular duties)

R2: To date, we have not encountered any problem.

R4: None so far.

R6: Too busy schedule of member in regular duties.

R7: Lack of IAU Staff; void in the absence of a Chairperson.

R8: None so far.

R10: In our region, the operation of the IAU was stalled for a while as we awaited the designation of an acting chairperson vice the Deputy Regional Prosecutor who asked to be detailed to another region leaving as with no IAU Chairperson.

R13: None

41. How have you addressed those problems?

R1: Coming up with our own procedures and formats based on the codes of conduct.

R2: N/A

R4: N/A

R6: Appointments.

R7: We make use of what we have.

R8: N/A

R10: During the interim, so as not to prejudice the operation of the IAU, the undersigned designated an IAU member as Acting Chairperson.

42. What other concerns might you have?

R1: Confidentiality and protection of IAU members' identity.

R2: Problem of "stalemate" arises should the Chairman not agree with the evaluation report of the IAU member/s. After a case is assigned and reassigned, the Evaluation and/or Report/Recommendation might come to a dead end as the Chairman is not allowed to prepare his own evaluation. The same thing will happen should the Regional Prosecutor not agree with the IAU Chairman as the latter is not also allowed to prepare his own Evaluation Report/Recommendation.

R4: N/A

R6: Procedure in Admin Complaints and adjudication should be more simplified without sacrificing due process.

R8: None so far.

R10: The undersigned would like to be clarified on the Letter of Dismissal to sign by the Secretary of Justice in cases where, after initial evaluation of a complaint against a prosecutor in the region, the IAU member recommends for the outright dismissal of the complaint and concurred in by the IAU Chair and the Regional Prosecutor. Do we just prepare a draft Letter of Dismissal addressed to the complainant to be signed by the SOJ (meaning: that the letter of dismissal bears the letterhead of the regional IAU concerned with a portion thereof reserved for approval and signature by the SOJ)?

I suggest that a seminar or workshop seminar will be conducted by the DOJ for all RPs, IAU Chairperson and Members for better understanding of the IAU procedures and for more efficient, effective and uniform application and implementation of IAU procedures.

R13: None.

Thank you for your time and invaluable inputs. The information you provided will be considered in determining possible business process improvements to generally enhance the effectiveness and efficiency of IAU operations.