

## **SECTION I - INSOLVENCY LAW REGIME**

### **I1. Underlying philosophy**

- (a) For bankruptcy, the underlying philosophy is distributive. With respect to reorganization and composition, the underlying philosophy is rehabilitative.
- (b) The principle of equal treatment for equal class of creditors underlies insolvency laws.
- (c) Penal sanctions are in part: fraudulent reorganization (Art. 289 - 290, Reorganization Act), bribery (Art. 291 - 292, Reorganization Act), prohibition on participation in management (Art. 292-2, Reorganization Act), unpermitted acts (Art. 292-3, Reorganization Act), refusal of report and inspection (Art. 293, Reorganization Act), fraudulent bankruptcy (Art. 369 Bankruptcy Act), violation of supervision or flight from domicile (Art. 369, Bankruptcy Act), violation of duty to explain (Art. 374, Bankruptcy Act).

### **I2. Jurisdiction in insolvency matters**

- (a) Civil.
- (b) Courts are competent to exercise jurisdiction in insolvency matters.
- (c) No.

### **I3. Types of insolvency procedures**

- (a) Types of insolvency procedures available under law are bankruptcy, reorganization and composition.
- (b) Bankruptcy: bankruptcy proceeding may be initiated by the insolvent debtor, creditors or other interested parties. Once the application is filed and accepted, the court may issue an order to preserve the assets of the debtor. The bankruptcy administrator is appointed to oversee the bankruptcy process. The aim of the bankruptcy law is to liquidate and distribute the remaining assets to the creditors in an equitable manner.

Reorganization: reorganization proceeding may be initiated by the insolvent debtor, creditors or shareholders. Once the application is filed and accepted, the court may issue an order to preserve the assets of the debtor. The receiver is appointed to oversee the reorganization process. The aim of the reorganization law is to restructure the debt and fix a reorganization plan that would promote the rehabilitation of the debtor.

Compulsory: reorganization proceeding may be initiated by the insolvent debtor, creditors or other interested parties. Once the application is filed and accepted, the court may issue an order to preserve the assets of the debtor. The composition administrator is appointed to oversee the composition process. The aim of the bankruptcy law is to induce an agreement between the creditors and the debtor and fix the composition plan that would promote the rehabilitation of the debtor.

- (c) The relevant laws are Bankruptcy Act, Company Reorganization Act and Composition Act.

#### **I4. Commencement of insolvency procedures**

- (a) Although it will depend on the case, a corporate debtor may seek an informal administration before formal insolvency procedures are commenced.
- (b) Bankruptcy: debtor, creditor and other interested parties  
Reorganization: debtor, creditors and shareholders  
Composition: interested parties and the court
- (c) Bankruptcy: bankruptcy petition may be filed if it is not possible to fully repay the debt.

Reorganization: reorganization petition may be filed if there is a material detriment to the continuation of business or there are reasons to believe that the debtor may go into bankruptcy. Although excess debt can be a cause for filing the petition, this factor is not a necessary requirement.

Composition: composition petition may be filed if causes for bankruptcy (including excess debt) exist or there are reasons to believe that the debtor may go into bankruptcy.

- (d) All types of insolvency proceedings are commenced by filing an application to the competent court. In the case of bankruptcy, the court also has the power to decide the initiation of bankruptcy proceeding on its own.
- (e) Reorganization: for small medium businesses, decision on the commencement of proceeding is required to be made with 3 months from application date (except in certain cases in which case the time is 5 months). The law does not state the time period for reorganization of businesses other than small and medium businesses.

Bankruptcy: there is no provision in law which states the time period.

Composition: 3 months, with 1 month extension in case of unavoidable reasons.

- (f) There is no separate court that solely hears insolvency cases and the current court system may not be effective in relation to handling of formal insolvency proceedings.

## **I5. Effect of insolvency procedures**

- (a) Bankruptcy

Powers of management: the management no longer has power of management.

Shareholders' interest: the shareholders have the right to the remaining assets after distribution to creditors and interested parties with priority over the shareholders.

Contracts to which debtor is a party: creditors under contracts with the corporate debtor will be part of bankruptcy claimants.

Legal proceedings: all present and future legal proceedings will cease.

Remedies: contract can be terminated.

## Reorganization

Powers of management: the management no longer has power of management.

Shareholders' interest: the shareholders no longer have shareholders' rights.

Contracts to which debtor is a party: creditors under contracts with the corporate debtor will be part of reorganization claim. Executory bilateral contracts can be terminated by reorganization receiver.

Legal proceedings: new compulsory execution will cease after asset preservation order; all compulsory execution proceeding currently in progress will cease after cease order.

Remedies: contract can be terminated.

## Composition

Powers of management: the management no longer has power of management, except for ordinary course of business.

Shareholders' interest: the shareholders have rights, with the administrator's consent.

Contracts to which debtor is a party: creditors under contracts with the corporate debtor will be part of composition claim. Contracts within the ordinary course of business will be effective.

Legal proceedings: new compulsory execution will cease after asset preservation order; all compulsory execution proceeding currently in progress will cease after cease order.

Remedies: contract can be terminated

- (b) A company in reorganization may be put in to bankruptcy proceeding. A company in composition cannot move on to bankruptcy.