

SECTION K. ASSETS AVAILABLE TO CREDITORS

K1. Assets available to creditors generally

- (a) In each type of insolvency procedures, all transferable assets of the business which may have economic value are available to satisfy the claims of the creditors.

In the cases of composition and reorganization, the insolvent debtor will repay its debts in accordance with the terms and conditions of the composition plan or reorganization plan, where relevant, as approved by the court. Therefore, the composition plan and reorganization plan effectively changes the terms and conditions of the original debt and the debtor repays its debts in any manner it chooses as long as the manner of repayment is in accordance with the terms and conditions under the respective plans. However, under composition, creditors with security rights over specific assets may exercise this security right to satisfy their claims regardless of the terms and conditions of the composition plan.

Under bankruptcy, except for such assets not transferable or assets required by the debtor to maintain his/her minimum standard of living, all transferable assets of the business which may have economic value are available to satisfy the claims of the creditors. However, creditors with security rights over specific assets will have priority rights of repayment from its respective security.

K2. Avoidance of past transaction affecting the assets of a corporate debtor

- (a) The creditor under the Bankruptcy and Corporate Reorganization Acts has the right to take legal action to avoid or nullify transactions deemed prejudicial to creditors, except, generally, for situations where the beneficiary of the transaction(s) concerned was unaware of any prejudice to the insolvency creditors. To avoid or nullify transactions deemed prejudicial to creditors, a creditor would file a litigation claim or request a simplified adjudication proceeding to the court. The Administrator, in its capacity, does not have such rights but theoretically, the Administrator may take such actions on behalf of the creditors. The Composition Act does not specifically allow for the avoidance or nullification of transactions deemed prejudicial to creditors

but the creditor may make a litigation claim to that effect under the Civil Code.

For your reference, the relevant articles of the Bankruptcy and Corporate Reorganization Acts are provided below which state the circumstances in which transactions may be avoided or nullified.

Article 64 of the Bankruptcy Act (Avoidable Acts)

The following acts may be avoided for the benefit of the bankrupt estate:

- 1. Any act done by the bankrupt with the knowledge that it would prejudice creditors in bankruptcy; provided however, that this shall not apply in cases where the person benefited by the act did not know, at the time of the act, the fact that it would prejudice creditors in bankruptcy;*
- 2. Any act relative to furnishing of securities or extinction of obligations, and any other act prejudicial to creditors in bankruptcy, done by the bankrupt subsequent to suspension of payment or after petition for bankruptcy has been filed; provided however, that this shall apply only in cases where the person benefited by the act knew at the time of the act that there had been suspension of payment or that petition for bankruptcy had been filed;*
- 3. Any of the acts mentioned under the preceding item, of which the other party is a relative of the bankrupt or a person sharing a livelihood with the bankrupt; provided however, that this shall not apply in cases where the other party did not know at the time of the act there had been suspension of payment or that petition for bankruptcy had been filed;*
- 4. Any act relative to furnishing of securities or extinction of obligations done by the bankrupt subsequent to suspension of payment or after petition for bankruptcy has been filed, or within thirty days prior thereto, which does not appertain to the duties of the bankrupt; provided however, that this shall not apply in cases where creditors did not know at the time of the act the facts that there had been suspension of payment or that petition for bankruptcy had been filed, or that it would prejudice creditors in bankruptcy; and*
- 5. Any gratuitous act, or non-gratuitous act which should nevertheless be*

deemed to be the same as a gratuitous act, done by the bankrupt subsequent to suspension of payment or filing of petition for bankruptcy, or within six months prior thereto.

Article 78 of Corporate Reorganization Act (Right of Avoidance)

Any of the acts set forth below may be avoided in favour of the company assets subsequent to the commencement of reorganization proceedings:

1. Any act done by the company with the knowledge that it would prejudice reorganization creditors or reorganization security holders (hereinafter in the present article to be referred to as the “reorganization creditors, etc.”); provided however, that this shall not apply where the person benefited by the act did not know at the time of the act the fact that it would be prejudicial to reorganization creditors, etc;

2. Any act prejudicial to reorganization creditors, etc., done by the company after suspension of payment, or after applications for bankruptcy, commencement of composition procedures, or commencement of reorganization procedures, (hereinafter in the present article to be referred to as “suspension of payment, etc.”) and acts connected with furnishing of securities or extinction of obligations; provided, however, that this shall apply only where the person benefited by the act knew at the time of the act that there has been suspension of payment, etc., or the fact that it is prejudicial to reorganization creditors, etc.;

3. Any act concerning furnishing of securities or extinction of obligations done by the company subsequent to suspension of payment, etc., or within thirty days prior thereto, which does not appertain to the duties of the company or which in its method or timing does not appertain to the duties of the company; provided, however, that this shall not apply where the creditor(s) did not know at the time of the act the fact that the company did it knowing that it would prejudice equality with respect to other reorganization creditors, etc., or, when such act is subsequent to suspension of payment, etc., where the creditor(s) did not know of the fact [of the suspension];

4. Any gratuitous act, or non-gratuitous act which should nevertheless be deemed to be the same as a gratuitous act, which the company has done

subsequent to suspension of payment, etc., or within six months prior thereto.

- (b) *Refer to our response of Section M.*
- (c) *Refer to our response of Section K2(a) of above.*