

## **SECTION E - COLLECTION AND RECOVERY OF UNSECURED DEBT**

### **E1. Negotiations**

- a) *Where a corporate borrower is in financial difficulty and an unsecured debt has become due, would it be usual or customary for an unsecured creditor (particularly, a bank creditor) and/or the corporate borrower to attempt to negotiate some suitable arrangement for repayment of the debt before the creditor invokes legal recovery methods?*

An unsecured creditor and corporate borrower are likely to attempt to negotiate. The bankruptcy law until recently prevented a creditor from injecting new funding if known that the debtor is insolvent at the time. Article 90 now allows new investment if in accordance with the plan. In certain circumstances, the debtor would not attempt to negotiate until a case is filed with the court where a lower interest rate would be fixed by Court under the Civil and Commercial Code if no contractual rate was specified.

### **E2. Enforcement**

- a) *What mechanisms are available under the legal system of this economy for unsecured creditors to collect debts owed to them by the corporate debtor?*

Unsecured creditors may seek Court judgment by filing of civil case. Otherwise, if certain conditions are met, debtors may file criminal charges for embezzlement or criminal cheque fraud, should a “bounced” cheque be given, or file a bankruptcy case against the debtor.

Enforcement procedures include seizure of assets, attachments, bankruptcy.

- b) *In practice, which method(s) of recovery of unsecured debts are most commonly employed by unsecured creditors of a corporate debtor?*

Seizure and bankruptcy are popular.

### **E3. Effectiveness of judicial system**

*a) How effective is the judicial and court system for the purposes of debt collection?*

In order to expedite the cases involving finance & banking institutions or bankruptcy related matter, certain specialized Courts or certain special sections within the Civil Court or other provincial courts have been organized to facilitate case proceedings. Even before the current economic problems, the courts were overloaded. Currently, delay is probably the biggest impediment towards justice. However, the situation is receiving attention. New courts are being considered and laws revised.

### **E4. Effect of insolvency proceedings**

*a) What effect, if any, does the commencement of insolvency proceedings against a corporate debtor have on debt recovery proceedings?*

Commencement of insolvency proceedings against a corporate debtor does not of itself prevent or stay other pending debt recovery proceedings i.e. civil cases. However, many plaintiff creditors would seek a court order placing the debtor under receivership by proving the prima facie insolvent status of the debtor. In this regard, a court appointed receiver shall take over all pending cases involving the corporate debtor and any actions relating to the debtor's assets must either be approved or endorsed by the Court, receiver, administrator of assets or at a creditors' meeting as the case may be.

*b) What effect, if any, does the formal pronouncement of an insolvency administration in respect of the corporate debtor have on debt recovery proceedings?*

Should an absolute receivership order be made, unsecured creditors, whether judgment creditors or not, and in respect of present and/or future liabilities, are required to file their claims to the appointed

official receiver within 2 months upon the publication of the court order. Secured creditors must notify the receiver to inspect such asset(s) and in case securities do not cover the debt, must file for the balance of the debt remaining unpaid. Should creditors fail to file claim within the specified or extended period of time, such debt shall not be enforceable under law.