

SECTION F - CIVIL/PENAL SANCTIONS

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- a) *Are there civil or penal/criminal sanctions in the legal system of this economy in relation to the incurring and non-payment of debts by corporate debtors (for example, some type of sanction - such as the concept of 'insolvent trading' - to which the directors of the corporate debtor may be subject)?*

Yes.

- b) *What are these sanctions?*

Where a corporate debtor cannot pay its debts, the creditor can enforce the corporate debtor pay for the debt are as follows:

A creditor has the right to sue a corporate debtor and obtain a civil judgment. If the debtor does not comply with the judgment, enforcement procedures through the court may be commenced. The execution officer is authorised to seize or attach the debtor's assets for sale by auction.

Section 278 "Subject to the provisions of this section governing the powers and duties of executing officers, and as from the date of service of the writ of execution on the judgment debtor or, if the writ has not been so served, from the date of the issue of the writ, the executing officer shall be empowered, on behalf of the judgment creditor, to receive performance and deposits made by the judgment debtor and to give receipts therefor, to seize or attach and to hold property belonging to the judgment debtor, to sell it by auction or to dispose of such property or the proceeds thereof, and generally to carry out all measures of execution prescribed by the court in the writ of execution.

An executing officer shall be responsible for the safe custody of any Moines, properties or documents which were seized by him or which were paid or delivered to him under a writ of execution.

An executing officer shall make and keep in safe custody records of all measures of execution carried out by him, and report to the court from time to time.

Where a corporate debtor is sued in bankruptcy, criminal liability may result from breach of the various bankruptcy provisions, including failure to advise of a change in address, failure to attend creditor meetings or provide reasonable assistance with realization of assets, or provision of misleading information and failure to communicate material matters without reasonable excuse (Bankruptcy Act, ss. 161-177). The following provisions of the Penal Code are also relevant:

Section 341: "Whoever dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person, or causes the person so deceived or a third person to execute, revoke or destroy a document of right is said to commit the offense of cheating a fraud, and shall be punished with imprisonment not exceeding three years or fine not exceeding six thousand Baht, or both".

Section 350: "Whoever, in order to prevent a creditor of other person from receiving payment in whole or in part which has been or will be claimed through the court, removes, conceals or transfers any property to another person, or maliciously contracts a debt for any sum which is not true, shall be punished with imprisonment not exceeding two years or fine not exceeding four thousand Baht, or both".

A wide variety of criminal sanctions exist for breach of the provisions of the new Article 90 of the Bankruptcy Act (ss.90/80-90/90) with respect to reorganization of a debtor's business operations, including failure to provide information, comply with provisions of the act, etc. Liability extends to managers, administrators, corporates and third persons.

- c) *Do any of these sanctions have the effect of encouraging the directors of a corporate debtor to seek protection for the corporate borrower under the insolvency law regime?*

No

- d) *Does the presence of the possible application of any of these sanctions create a problem if a corporate debtor which is in financial difficulty or*

insolvent seeks to negotiate an informal work out with creditors?

The criminal sanctions are seldom used. In any case, the liability is for specific breaches of legislation. Criminal liability does not arise simply by virtue of insolvency, but through non-compliance with the provisions creating obligations once insolvent. Therefore, such sanctions do not create a significant problem or restrain debtors in this manner.