

SECTION J - CASE MANAGEMENT OF INSOLVENT ENTERPRISES

J1. Administration of insolvency procedures generally

- a) *In relation to each type of insolvency procedure available in the legal system of this economy, what are the administrative organs/entities involved in the implementation and management of that procedure? (For example a trustee, liquidator, receiver, government official.)*

When the court has ordered a debtor to be placed under receivership, the receiver solely shall have the power to manage and dispose the asset of the debtor, or do any necessary act to complete any pending business of the debtor.

In the case of a business reorganization under Article 90 of the Bankruptcy Act, the planner will have the power and duties to manage the business and assets of the debtor. If the court orders a business reorganization but has not yet appointed a planner, the power and duties of the debtor's executive in managing the business and assets shall cease. The court will appoint one or more persons or the debtor's executive to be the interim executive with the power and duties in managing the business and assets of the debtor under the supervision of the receiver until an planner is appointed. During the time in which it is not possible to issue an order to appoint an interim executive, the receiver shall have the temporary power to manage the business and asset of the debtor. (Section 90/20 of the Bankruptcy Act)

- b) *What qualifications must each type of administrator of insolvency procedures possess? Is there a system of regulation of insolvency administrators in this economy?*

There is no regulation specifying the qualifications of the administrator. There are only specified qualifications for the receiver, viz.:-

1. Thai nationality
2. LL.B. degree
3. Passed the execution officer's examination.

- c) *Are the creditors of a corporate debtor permitted to participate in the administration of the relevant insolvency procedure, and if so, how? (For example are the creditors permitted to assist the administrator, or supervise or dictate the conduct of the administration?)*

The creditors of a corporate debtor are permitted to participate in the administration of the relevant insolvency procedure, as follows:-

1. Attending the creditors' meeting to consider what business, if any, the creditors would allow the debtor to proceed with;
2. Considering whether to give the consent to any requests/applications made by the debtor; and
3. Voting on whether to accept a planner appointed by the debtor or whether to approve or amend the plan prepared by the planner (in the case of a reorganization).

J2. Powers of the administrator

- a) *In relation to each type of insolvency procedure available in the legal system of this economy, what are the powers given to each type of administrator by statute, at general law or pursuant to the terms of the appointment? (For example power to carry on the business of the organization, to pay creditors, to compromise claims of or against the debtor, to issue or defend legal proceedings, to obtain credit, to sell property, to execute documents on behalf of the debtor.)*

Under the Bankruptcy Act, B.E.2541, when the court orders the debtor to be placed in receivership, the receiver solely shall have the following powers:

1. to manage and dispose of the assets of the debtor, or do any necessary act to complete any pending business of the debtor;
2. to collect and receive money or assets belonging to the debtor, or which the debtor is entitled to receive from others;
3. to compromise, come to a settlement, file actions or defend actions relating to the assets of the debtor.

When the court has ordered the debtor to be placed under receivership, it is prohibited for the debtor to do any act relating to its assets or his

business (including executing any document), except with the approval of the court, the receiver, the administrator of the assets, or a creditors' meeting.

In the case of the court ordering a business reorganization, the planner will have the power and duty to manage and carry on the business of the organization, to pay creditors, to issue or defend legal proceedings, to obtain credit, to sell property and to execute documents on behalf of the debtor.

- b) *To what extent and in what circumstances may each type of insolvency administrator seek assistance, advice or direction in the conduct of the administration, and from what sources? (For example the Court, his appointor, the creditors of the debtor, a solicitor, accountant or other relevant person.)*

At a creditors' meeting, a resolution may be passed appointing a committee of creditors to represent all creditors in matters relating to the management of the debtor's assets. The receiver may apply to the court for orders and under sections 141-145 of the Bankruptcy Act, the official receiver is empowered to employ counsel to act on his behalf.

J3. Duties of the administrator

- a) *In relation to each type of insolvency procedure available in the legal system of this economy, what are the duties imposed upon each type of administrator by statute and at general law? (For example a duty to take possession of assets of the debtor, to realise those assets, to discharge the debt owed to his appointor, to call for proofs of debts owed to creditors, to adjudicate upon claims of creditors, to apply available assets in discharge of those claims, to report on the conduct of the debtor by the proprietors.)*

The official receiver's duties include reporting on matters relating to the business, property or conduct of the debtor, assisting in examining the debtor or other persons as required by the court and to borrow money for the benefit of the management of the debtor's property (if

necessary). On approval from the Creditors' Committee, the official receiver may withdraw the attachment of property, transfer property other than by public auction, surrender a right, file or withdraw a civil action or (other) bankruptcy case, and effect a compromise or submit a matter to arbitration.

Other duties and powers include the following:

Under Section 19 of the Bankruptcy Act, if the court orders to place the debtor under receivership order, the receiver is empowered to attach seals, accounting ledgers, and documents belonging to the debtor, and all assets in the possession of the debtor, or in the possession of other persons, which may be distributable in the bankruptcy action. In attaching such assets, the receiver is empowered to enter into any premises belonging to the debtor, or of which he is in possession, and, is empowered to make a forcible entry into any such place, including to open any safe, cupboard or other place for the keeping of things, as may be necessary.

Under Section 21 of the Bankruptcy Act, on the application of the receiver, the court is empowered to order post and telegraph officials to send to the receiver telegrams, postal mail, letters, or other papers addressed to the debtor, for a period not exceeding six months from the date that the debtor's assets are under receivership.

The receiver can file a motion to the court for an order to cancel fraudulent acts under the Civil and Commercial Code. (Section 113)

Transfers of asset or any acts concerning the debtor's asset, done or permitted to be done by the debtor during the three years prior and subsequent to the application to adjudicate him as bankrupt, may be cancelled by order of the court upon the filing of a motion by the receiver, except where the transferee or the beneficiary can prove to the satisfaction of the court that such transfer or act was made in good faith and for consideration. (Section 114)

Upon the filing of a motion by the receiver, the court is empowered to any transfer of asset or any act done pr permitted to be done by the

debtor during the three months prior and subsequent to an application to adjudicate him as bankrupt, and with the intention to give undue preference to a creditor. (Section 115)

Upon the application of the receiver, the court is empowered to compel persons who admit to being indebted to the debtor, or who admit to possessing an asset belonging to the debtor, to pay money or deliver the asset to the receiver within such period as the court may deem proper. If the order of enforcement is not complied with, the receiver may apply to the court for a writ of execution as if such persons were judgment debtors. (Section 118)

When it appears that the debtor is entitled to claim for repayment of money from another person, or demand that such other person deliver assets to the debtor, the receiver shall inform such person in writing to repay such money or deliver such asset, as is stated in the notice, and shall inform such person that if liability is disclaimed, he shall show cause for such disclaimer in writing to the receiver within fourteen days from the date of receipt of the above notice. Otherwise, it shall be deemed that such person is indebted to the bankrupt estate in the amount aforestated.

If the person receiving such notice disclaims liability to the receiver within the time prescribed in the previous paragraph, the receiver is required to conduct an investigation, and if the receiver finds that such person is not indebted to the debtor, he shall delete the person's name from the list of debtors and inform such person accordingly. If it is found that the person is indebted to any extent, the receiver shall inform the person in writing, confirming the amount of liability. The receiver must also inform the person that if he has any objections to make they must be filed with the court within fourteen days from the date of receipt of the confirmation of his indebtedness.

If the person receiving the confirmation of indebtedness objects to the court by filing a motion within the time stated in the previous paragraph, the court shall consider the matter. If the court is satisfied that he has indebtedness, there shall be an order directing such person to pay the

money or deliver the asset to the receiver. If it is found that there is no indebtedness, there shall be an order directing the deletion thereof from the list of debtors.

If any person who receives a notice from the receiver does not make a disclaimer to the receiver, or does not file any objection with the court within the period prescribed above, the receiver may apply to the court to compel such person to repay the debt within the period the court deems appropriate.

If such person does not comply with such an order, the receiver may apply to the court to issue of a writ of execution as if such person were a judgment debtor.

Where a person against whom a demand for repayment of debt has been made files an objection to the court, the receiver may file a motion to the court for an order of temporary attachment or temporary injunction against the asset of the objecting party before a court order regarding such debt is issued. (Section 119)

Within three months from the date on which the receiver learns that assets of the debtor or rights under a contract are subject to terms more onerous than the benefits receivable thereunder, the receiver is empowered to refuse such asset or rights under the contact. (Section 122)

Under the reorganization procedure, upon a motion being submitted by the planner, plan administrator, or receiver, the court has the power to compel those persons who admit that they are indebted to the debtor or who admit that they have assets of the debtor in their possession. to pay the debt or turn over those assets to the planner, plan administrator or receiver within the time period deemed appropriate by the court. If such person fails to comply with the order, the planner, plan administrator, or receiver can ask the court to issue a writ of execution treating that person as if her were a judgment debtor. (Section 90/38)

When it appears that the debtor has the right to demand that any person repay debts or deliver assets to the debtor and such person does not admit that he is indebted to the debtor or that he has in his possession assets belonging to the debtor, the planner or plan administrator shall notify the receiver for further procedures.

The receiver shall give a written notice to such person to repay debts or deliver assets, as stated in the notice. Where the debts are disputed, a letter giving the reasons why must be sent to the receiver within 14 days of the date of receipt of the notice. Otherwise, it shall be deemed that such person is conclusively indebted to the debtor for the amount stated in the notice.

If the person receiving such notice disputes the indebtedness in writing to the receiver within the time stipulated in paragraph two, the receiver is required to conduct an investigation, after which the receiver shall notify the planner or plan administrator, and such person of the result. There is a right of objection if filed with the court within 14 days of the date of receipt of the receiver's notification.

If an objection is filed by motion with the court within the time stipulated above, the court shall consider the matter. If the court is satisfied that such person has indebtedness, the court shall issue an enforcement order that person pay the debt or deliver asset to the planner or plan administrator. If the court sees that such person is not indebted to the debtor, the court shall issue an order to strike such person's name from the list of debtors.

If such person does not comply with the court's order, the receiver may make a request that the court issue a writ of execution as if such person has been adjudged a judgment debtor.

Where the person subject to demand for repayment of debts files an objection with the court, the receiver may make a request in the form of motion to the court for an order of temporary seizure or attachment of the asset of the person filing the objection before an order regarding such debts is issued. (Section 90/39)

The planner, plan administrator, or receiver may ask the court to cancel a fraudulent act pursuant to the Civil and Commercial Code by filing a motion. (Section 90/40)

When it appears that there has been a transfer of assets or any other act which the debtor had committed or had allowed to be committed within the period of three months before and after the filing of the motion, with the intent to place any creditor in an advantageous position over the other creditors, the planner or plan administrator or receiver may submit a request to the court in the form of a motion. In this regard, the court has the power to order the cancellation of the transfer or such act.(Section 90/41)

J4. Breach of duty and liability of administrators

- a) *What remedies and/or sanctions are available in the legal system of this economy in respect of breaches of duty or transgressions committed by each type of insolvency administrator?*

If an interim executive, planner, plan administrator, or interim plan administrator dishonestly carries out or omits to carry out his duties or if he violates or fails to comply with the duties under the rehabilitation procedure, such person is liable to a fine not exceeding Baht 500,000 or imprisonment not exceeding 5 years, or both.

In carrying out his duties, the receiver shall have no personal liability, except when he has acted with bad intent or gross negligence. (s.147)

- b) *Have there been actual instances of breach of duty or transgressions committed by insolvency administrators?*

There have not been actual instances of breach of duty or transgressions committed by insolvency administrators.

- c) *If so, give details of any major cases and a summary of the action taken and the results.*