

SECTOR K - ASSETS AVAILABLE TO CREDITORS

K1. Assets available to creditors generally

a) In relation to each type of insolvency procedure available in the legal system of this economy, what assets of the business organization are available to its administrator to satisfy the claims of its creditors?

The assets of the business organization that are available to its administrator for the creditors' claims are as follows:

- (1) All assets belonging to the debtor as from the beginning of the bankruptcy, including all rights over any asset of third parties, except:
 - a. Personal and necessary effects that the debtors his wife and his minor children reasonably require in accordance with their status, and
 - b. Livestock, seeds, and instruments for use in the debtor's livelihood, of a total value not exceeding Baht three thousand.
- (2) Assets accruing to the debtor subsequent to the institution of the bankruptcy preceding and up to the date of his discharge from bankruptcy.
- (3) Things in the possession or disposition of the debtor in the course of trade or business of the debtor by the consent of the true owner under circumstances which create the impression that the debtor is the owner at the time of the filing of the application for adjudication of bankruptcy of the debtor. (Bankruptcy Act s. 109).

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

a) To what extent and in what circumstances may the administrator of a business organization take steps to recover assets of the organization by overturning past transactions involving property of the organization? (For example preferences given to certain creditors over others, invalid charges granted by the organization, uncommercial transactions entered into by the organization, profits on sales to and from the organization at an undervalue or overvalue.)

Transfers of assets or any acts concerning the debtor's assets, made or

permitted to be made by the debtor during the three years prior and subsequent to the application to adjudge him bankrupt, may be canceled 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. (Bankruptcy Act, s. 114)

Upon the filing of a motion by the receiver, the court is empowered to cancel any transfer of assets or any act done or permitted to be done by the debtor during the three months prior and subsequent to an application to adjudge him bankrupt, and with the intention to give undue preference to a creditor. (Bankruptcy Act, s.115)

- b) *What powers or mechanisms are available to each type of administrator for investigation of the affairs of the business organization, for examination of persons formerly involved in the management or control of the organization, and for the discovery of assets of the organization?*

The receiver is empowered to issue a summons to the debtor or any person who has been ascertained to or is suspected of having the debtor's assets in its possession, or who is believed to be indebted to the debtor, or is considered to be capable of giving information regarding the business or assets of the debtor, to appear for examination or investigation and is empowered to order that such person produce documents or evidence in such person's possession or control, which relate to the business or assets of the debtor. If such person intentionally defies the summons or order, the court is empowered to issue a warrant for the arrest of the person and to detain him until he complies with the order of the court or receiver.

- c) *What procedures may be employed by each type of administrator for the recovery of assets of the business organization which are available for distribution to creditors? (For example initiation of legal proceedings, compensation from directors.)*

Assets realized by the receiver on the debtor's bankruptcy may be sold by the receiver in the manner which is most convenient and beneficial.

However, sale other than by public auction must receive the approval of the creditors committee, except when the assets are perishable or would deteriorate if kept for any length of time, or the expense would be disproportionate to the value of the asset(s). (s.123)