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Money for Nothing, Your Crisis for Free?: A Comparative Analysis of Consumer Credit Policies for Post-1997 South Korea and Thailand

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MONEY FOR NOTHING, YOUR CRISES FOR FREE?: A COMPARATIVE ANALYSIS OF CONSUMER CREDIT POLICIES IN POST-1997 SOUTH KOREA AND THAILAND

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Abstract: Both the South Korean and Thai governments encouraged consumer credit card usage to boost consumer spending and reinvigorate the national economy following the 1997-98 Asian financial crisis. Today, almost a decade following the crisis, the authors provide a comparative analysis of how policymakers in both South Korea and Thailand have attempted to regulate the rapid upsurge in consumer credit card debt in their respective economies. This Article also notes some of the benefits and risks of the approaches taken by the South Korean and Thai governments, using as focal points the South Korean government's Individual Debtor Rehabilitation Act, a personal debt relief program introduced by the Thai Ministry of Finance in 2005, and a series of Bank of Thailand credit card regulations.

I. INTRODUCTION

Since the 1997-98 Asian financial crisis ("1997-98 Crisis"), South Korea[1] and Thailand have witnessed a rapid growth of the credit card industry and increasing levels of bad debt as a result of such growth. South Korea, in particular, has become a nation of massive credit card defaulters. In 2003, nearly ten percent of the entire Korean population (approximately four million individuals) defaulted on their personal credit card debts or loans.[2] Representative Lee Han-koo of South Korea's main opposition Grand National Party declared that one out of every 8.4 employed Koreans

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[1] For purposes of this article, "South Korea," "ROK," and "Korea" (and any derivation thereof) shall collectively refer to the Republic of Korea.

[2] John Larkin, *The House of Cards*, TIME, Dec. 1, 2003, *available at* http://www.time.com/time/magazine/article/0,9171,552170,00.html.

are credit defaulters,[3] despite strong government efforts to curb the problem.[4] In 2002-2003, Korean households held an average household debt of approximately 27,000 U.S. dollars ("USD").[5] In 2006, Korea ranked second in credit card use (slightly behind Britain) with sixty-eight percent credit card use penetration, eighty-three million cards in circulation, and 3.6 trillion Korean won ("KRW") (USD 3.6 billion) in transaction volume.[6] At the same time, new personal bankruptcy filings totaled 122,608 in 2006, nearly triple the previous year's total of 38,773 and a staggering ninety-fold increase from 2002, according to the Korean Supreme Court.[7]

Following the 1997-98 Crisis, the Korean government spurred consumer credit card use through two proposed solutions to boost domestic consumer spending.[8] The first government initiative provided incentives for consumers to use credit cards, such as a twenty percent income tax deduction for those whose credit card expenditures totaled more than ten percent of his or her annual income.[9] The second government initiative provided deregulatory incentives to consumer credit card issuing institutions, including the lifting of long-held restrictions against cash advances.[10]

Shortly after 1997-98, South Korea's economy experienced a decrease in consumer domestic spending.[11] Beginning in 1999, however, the government spurred consumer spending by promoting the use of credit cards.

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[3] "Credit default" is defined as having over 300,000 Korean won ("KRW"), approximately 300 U.S. dollars ("USD"), in overdue debt for more than three months or, alternatively, having three "cases" upon which payments were overdue. Conversions from KRW to USD are calculated using the currency exchange rate of KRW 1000 per USD.

[4] Yoon Ja-young, *2.9 Million Credit Defaulters Still Threat to Economy*, KOREA TIMES, Oct. 31, 2006.

[5] *Id.*

[6] Na Jeong-ju, *Korea Ranks 2nd in Credit Card Use*, KOREA TIMES, Dec. 14, 2006 (stating that South Korea's credit card use was higher than use in the United States (65%), Hong Kong (58%), Singapore (44%), and Taiwan (36%)).

[7] *See* Supreme Court of Korea website, http://www.scourt.go.kr/scourt_en/Proceedings/t04_08/index.html. *See also Bankruptcy Filings Tripled in 2006*, JOONGANG DAILY, Jan. 8, 2007, at 5.

[8] The government initiatives effectively created the consumer credit card market, given that one of the two initiatives involved the deregulation of cash advances, which is what credit cards were classified as prior to 1999.

[9] *See* Larkin, *supra* note 2.

[10] *Id.*

[11] The reasons for this were twofold. First, many Koreans saw their purchasing power drop substantially during the 1997-98 Asian financial crisis ("1997-98 Crisis"), which directly translated into fewer consumer purchases. Second, many Korean industries during the 1997-98 Crisis were forced into bankruptcy, which increased unemployment rates and dramatically deflated consumer confidence. Thus, in the post-1997-98 Crisis economic environment, until 1999 when consumers faced the decision of spending now or not spending at all, consumers generally chose simply not to spend. After 1999, there was an increase in consumer spending. *See generally*, James Crotty & Kang-kook Lee, *The Effects of Neoliberal "Reforms" on the Post-Crisis Korean Economy*, 38 REVIEW OF RADICAL POLITICAL ECONOMY 669, 672 (2006), *available at* http://rrp.sagepub.com/cgi/content/abstract/38/4/669.

As a result, consumer spending behavior dramatically changed so that individuals spent money on credit in a far greater proportion than ever imagined by policymakers and credit-lending institutions. This ultimately led to binge credit spending in the form of credit repayment delinquencies and debtor defaults.[12]

Similarly, Thai policy makers have widely acknowledged the key role that personal consumption and the liberalization of retail credit played in reviving the Thai economy after the 1997-98 Crisis.[13] Many have noted that Korea and Thailand share a broad pattern in that both are recovered economies driven in large part by domestic spending. Others have argued that the similarities between the two countries endorsing credit card spending as a main cure for the economy are limited in several respects.[14] Nevertheless, Thailand witnessed rapid growth in its domestic credit card industry from 2001 to 2003, the same time period in which South Korea also witnessed rapid domestic credit card growth. The year 2002 alone saw a 119% increase in the number of credit cards in circulation.[15] While growth has since slowed, the year-on-year number of cards in circulation climbed by fourteen percent in 2006 continuing a trend of annual double digit increases.[16]

Following such developments, and despite tighter regulations from the Bank of Thailand ("BOT") to cope with such rapid growth,[17] observers

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[12] *See* ASIAN DEVELOPMENT BANK, ASIAN DEVELOPMENT OUTLOOK 13 (2003), http://www.adb.org/documents/books/ado/2003/kor.asp.

[13] *See* M.R. Pridiyathorn Devakula, Governor, Bank of Thailand, Address at the British Chamber of Commerce-Thailand Special Luncheon: Thailand: Recent Economic Performance and the Road Ahead, (Oct. 1, 2003), *available at* http://www.bot.or.th/bothomepage/General/PressReleasesAndSpeeches/Speeches/english_version/speech_Governor&deputyGovE.htm.

[14] Yunyong Thaicharoen et al., *Rising Thai Household Debt: Assessing the Risks and Policy Implications* 56 (Bank of Thailand Discussion Paper, Nov. 2004).

[15] In the fourth quarter of 2002, there were approximately 5.6 million cards circulated in Thailand compared with the fourth quarter of 2001 during which the number was approximately 2.5 million. Bank of Thailand, Financial Data of Commericial Banks, http://www.bot.or.th/bothomepage/databank/Financial_Institutions/New_Fin_Data/CB_Menu_E.htm (scroll down to line 15 "Credit Card Data Classified by Types of Cards"; then select "(Q) 1999-2004" in that line's drop-down menu to download a spreadsheet containing the data) (last visited Dec. 3, 2007).

[16] *See Credit Card Usage in April Reaches 20.58%*, KRUNGTHEP TURAKIJ, June 13, 2006, at 13.

[17] *See* The Bank of Thailand, Notification of the Bank of Thailand Re: Rules, Procedures and Conditions to Undertake Credit Card Business of Commercial Banks, dated Mar. 23, 2004; The Bank of Thailand, Notification of the Bank of Thailand Re: Rules, Procedures and Conditions to Undertake Credit Card Business of Credit Card Business Operators, dated Mar. 4, 2005 [hereinafter, and collectively, the 2004 BOT Regulation]. The first Notification is applicable to all local commercial banks and all branches of foreign commercial banks while the latter is applicable to all non-bank credit card companies. Although the latter Notification was issued in 2005, their substantive content is almost identical to each other and the authors think referring to them collectively should suffice our referencing purpose and will note otherwise when separation between the two is necessary.

ranging from research bodies[18] to Thai Prime Minister Thaksin Shinawatra, voiced concerns regarding the surge in credit card usage.[19] In October 2005, the Thai Ministry of Finance ("MOF") unveiled an extremely controversial personal debt restructuring measure ("PDRM") that was widely reported in the press as targeting a fifty percent reduction of debt principal and a complete interest write-off (i.e., 100%)[20] of qualified personal and credit card loans.[21] As reported, the PDRM would have wiped out seven billion Thai baht ("THB") in debt principal and twenty billion THB in accrued interest[22] (approximately USD 675 million for the total debt amount of THB twenty-seven billion).[23] When subsequently released, though, the official text of the PDRM contained express language excluding credit card debt.[24] Nevertheless, during the period between the MOF announcement and the release of the official text, confusion existed regarding exactly which types of consumer debt the PDRM would cover and senior executives of Thai commercial banks gathered to voice their uniform concern relating to the potential for moral hazard.[25] As with Korea's Individual Debtor Rehabilitation Act ("IDRA"),[26] eligibility for the PDRM is limited to qualified individuals. By failing to include a steady salary as one of the

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[18] *See* Chatrudee Theparat, *NESDB Concerned About Debt*, BANGKOK POST, Mar. 21, 2005.

[19] Prime Minister Thaksin Shinawatra, Radio Broadcast: Prime Minister Thaksin Meets the People (May 28, 2005) (during which the prime minister opined on current affairs).

[20] For instance, assuming owed amounts totaling 400 Thai baht ("THB") (i.e., THB 100 in principal and THB 300 in accrued interest), an individual qualified under the personal debt restructuring measure ("PDRM") would need to pay only THB 50 prior to the loan's stated maturity date.

[21] The title "Personal Debt Restructuring Measure" is the authors' translation of the official title in the Thai Language "Matrakarn Prab Krongsang Nee Pak Prachachoen" as there has not been an official English title of the measure at the time this Article was written. The use of the term "Personal Debt Restructuring Measure" is meant to capture a word-for-word translation of the Thai title, as well as distinguish it from other similar measures for which the title in Thai has already been officially translated into English, such as the "Corporate Debt Restructuring." *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005).

[22] *See* Wichit Chantanusornsiri, *Credit Card NPLs with State Banks to Get 50% Write-down*, BANGKOK POST, Oct. 6, 2005. *See also* Darana Chudasri & Wichit Chantanusornsiri, *Banks Want Clearer Details of Latest Aid Scheme*, BANGKOK POST, Oct. 11, 2005.

[23] Conversions from THB to USD are calculated using the relevant annual currency exchange rate of THB 40 per USD.

[24] *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005).

[25] *See* Wichit Chantanusornsiri & Darana Chudasri, *Banks Worry About Bad-Debt Habit*, BANGKOK POST, Oct. 5, 2005. The term "moral hazard" originates from discussion about insurance economics and is used in this Article to describe a situation when there is a lack of incentive to guard against risk where one is protected from its consequence. *See* PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, ECONOMICS 195 (16th ed. 1998).

[26] As of March 24, 2006, the Individual Debtor Rehabilitation Act ("IDRA") has been revised and incorporated into the wider-reaching coverage area of the Debt Rehabilitation and Debtor Act, which covers both individuals as well as corporate entities.

criteria, the PDRM risks being yet another "restructuring opportunity" in which borrowers would still potentially be in debt at the end of the process.

This Article's main research objective is to provide a comparative analysis of the regulatory approaches relating to consumer credit policies in both post-1997 Thailand and South Korea to determine whether Thailand's "preemptive" method as reflected in the 2004 BOT Regulation or South Korea's "bailout" method as reflected in the IDRA represents a more effective approach in terms of mitigating the surging problem of individual credit defaults found in both economies. After providing an introduction to the parallel rises in popularity of credit card usage, the noticeable shift in consumer spending cultures, and a general description of the spending hangovers that followed the 1997-1998 financial crises, this Article will proceed as follows. First, a comparison will be made between the Korean and Thai regulators' efforts to cope with the credit card boom phenomenon, with specific focus given to the IDRA and its stated objectives versus the 2004 BOT Regulation, highlighting the similarities as well as differences in the regulatory approaches between the Korean government's IDRA and the Thai Ministry of Finance's PDRM. Second, a policy analysis evaluating the IDRA's approach will focus on significant similarities or differences in the 2004 BOT Regulation and the PDRM in Thailand. This Article concludes that, based on the evidence, Thailand's "preemptive" approach may prove preferable in terms of a legislative solution to the consumer credit card epidemic. This is due to the fact that a "preemptive" approach appears to be more effective at alleviating the consumer credit problem, may represent a better use of tax revenue, and may provide for a better investment climate as a result of its relatively non-interventionist approach. More broadly, this Article also notes some of the relevant regulatory risks associated with both the Korean and Thai post-1997 consumer credit policies. The result of our examination of these risks suggests that they could potentially increase the likelihood of destabilizing both the Asian and the international financial markets due to issues of moral hazard and unnecessary market intervention.

II. GOVERNMENT INTERVENTION VS. FREE MARKET SOLUTIONS: A RELEVANT QUESTION FOR SOUTH KOREA AND THAILAND

The issue of whether or how a government may regulate the increased availability of loans to borrowers with bad credit histories as a result of a specific public policy has always been a primary concern among policy makers and academics alike.[27] However, as our survey below concludes, there has yet to be any academic literature that deals directly with this issue, particularly in the context of credit card markets in South Korea and Thailand. Thus far, no literature currently exists that deals with individual credit defaulters from a legal and policy perspective within the South Korean context in the post-1997 period. Existing research separates the credit defaulter problem from the credit card corporation delinquency problem, and generally focuses on credit card corporation delinquency in relation to South Korean macroeconomic growth. For example, Choi (2004) argues that stimulating macroeconomic growth by encouraging credit card companies to rampantly issue credit cards was not sound economic policy.[28] Choi discusses several government policies intended as countermeasures, but does not focus on the legal issues embedded in these policies. Similarly, the Korea Institute of Finance analyzed Korean government policy relating to credit card defaulters, and argued for the greater use of revolving credit card lines (which is common in the United States, but currently not widely adopted in South Korea) along with related structural reforms.[29] Finally, Oh (2004) discusses the IDRA, but only in the context of a practical guide for interested credit defaulters who are seeking IDRA protection.[30]

As for Thailand, many studies explore the merit of consumer-led recovery as one of the necessary strategies for a successful Thai economy and address the subsequent rise in consumer debt following the 1997-98 Crisis. For example, Chaipravat and Hoontrakul (2000) discuss the problems encountered by the Thai credit market after the 1997-98 Crisis, and identify the personal consumption and liberalization of retail credit as one major policy proposal among others that was responsible for the Thai economy's recovery after 1997.[31] However, their paper does not discuss the ramifications of policy initiatives fostering a consumer-driven recovery.

Even fewer studies have sought to explicitly compare Thailand's initiatives with the responses of foreign counterparts facing similar

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[27] For a recent discussion of this issue as related to the home ownership policy and housing loans, see Posting of Richard Posner to The Becker-Posner Blog, *Subprime Mortgage Loans–Posner's Comment* (June 24, 2007), http://www.becker-posner-blog.com/archives/2007/06/subprime_mortga.html.

[28] *See generally* GON PIL CHOI, KOREA INSTITUTE OF FINANCE, SHINYONG BUHLANGJAH KEUPJEUNGEUH WONINGWAH DEHCHEK [CAUSE OF CREDIT DEFAULTERS AND ITS COUNTERMEASURES], REPORTS ON POLICY RESEARCH, (2004).

[29] *See generally* 13 KOREA INSTITUTE OF FINANCE, CONFRONTING STRATEGY FOR THE CREDIT DEFAULTER PROBLEM, KOREAN ECONOMIC AND FINANCIAL OUTLOOK, at 8 (2004).

[30] *See generally* SOO-GEUN OH, ET AL., EASY UNDERSTANDING OF THE IDRA PROCESS, (Ewha University Press 2004).

[31] *See generally* Olarn Chaipravat & Pongsak Hoontrakul, *Thai Credit Market Failures: The 1997 Aftermath*, 15 TDRI Q. REV. 4, (Dec. 2000).

challenges, such as South Korea. A recent BOT Discussion Paper by Thaicharoen, Ariyapruchya and Chuched (2004) discusses rising household debt in Thailand, focuses on the risks and policy implications arising from increasing household debt, and compares credit card market developments in South Korea and Thailand.[32] While the Discussion Paper concludes that the Thai regulators have taken a more cautious approach to cope with the increasing popularity of credit card usage, the Korea-Thai comparison is brief and expressly limited to identifying and suggesting the rise of household debt as a macro-economic threat. It neither evaluates nor discusses in detail the 2004 BOT Regulation or related efforts by the BOT to cope with mounting credit card debt; its limited comparison of Korean and Thai policies is one component of a more general discussion of risks stemming from high household debt. Finally, although the PDRM generated much controversy when it was announced by the MOF in October 2005, its implementation is recent and there is no current academic literature that deals directly with the PDRM as part of a continuing governmental effort to bail out consumer loan debtors. While Thailand's PDRM expressly excludes credit card debtors, this Article suggests that the differences and similarities in their theoretical approach and procedural character merit a comparison with South Korea's IDRA.

This Article attempts to provide greater clarity as to how governmental regulations and debt relief efforts may impact the Thai and South Korean markets, thereby benefitting not only the academic community but also the financial community.[33] The Article concludes that the "preemptive" approach in the 2004 BOT Regulation is preferable to the "bailout" approach taken by South Korea's IDRA and Thailand's PDRM for three reasons. First, the total credit card outstanding balance decreased after the BOT enacted its regulation. Second, preemption is lower in cost to implement because it does not pass the cost of resolving bad loans to taxpayers, as is the case with the bailout approach. Finally, the credit markets are more stable as a result of the preemptive approach because it signals to the market that the regulator will make narrowly focused efforts to

[32] *See generally* Thaicharoen et al., *supra* note 14.

[33] In particular, global investment banks based in the Asia-Pacific region have a significant interest in the South Korean and Thai markets. Specifically, such interest is in part focused on the Korean consumer non-performing loan ("NPL") market. If the IDRA is effective in curing South Korea's creditor delinquency problem, the NPL pool size may be less than if the IDRA is ineffective legislation and does not significantly curb the growing number of consumer defaults in South Korea. Often such NPLs are purchased by global investment banks, such as Morgan Stanley, Goldman Sachs, Deutsche Bank, and Lehman Brothers, to use as collateral for the issuance of high-yielding asset-backed securities vis-à-vis the use of a special purpose vehicle as issuer domiciled in a tax-efficient jurisdiction, such as Bermuda, Cayman Islands, Labuan, or Mauritius.

cope with a potential credit crisis, as opposed to implementing broad bailout frameworks which can create moral hazard issues.

III. FROM CRISIS TO CRISIS: KOREA AND THAILAND'S DEBT DILEMMA

A. Non-Performing Loans: The Link Between the 1997 Financial Crisis and Consumer-Driven Policy

The 1997-98 Crisis had profoundly negative effects on both the Thai and South Korean economies and triggered somewhat similar responses. Facing enormous numbers of non-performing loans ("NPLs"), [34] both governments created national asset management companies ("AMCs")[35] to purchase NPLs from domestic institutions and sell them to interested investors.

1. Thailand's Response to Non-Performing Loans: The Financial Sector Restructuring Agency, the Corporate Debt Restructuring Advisory Committee, and Other Structural Changes

The decision on July 2, 1997 to float its national currency set in motion a series of events triggering Thailand's 1997-98 Crisis.[36] Freed of the rigid national controls previously applied to them, exchange rates fluctuated causing many business borrowers to default on loans obtained while the THB was tied to the USD. Substantially similar to the experience of many Asian nations facing the 1997-98 Crisis, NPLs represented one of the most troublesome ramifications of the 1997-98 Crisis for Thailand. The majority of NPLs were commercial loans originated primarily to industrial and real estate sectors.[37] At the end of May 1999, the level of NPLs in Thailand reached THB 2.7 trillion (approximately USD sixty billion) or 47.7% of total loans made by Thai financial institutions.[38]

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[34] Although there has not been a set of universal criteria to distinguish performing from non-performing loans because loan classification still varies from one country to another, it is broadly understood that the term NPL refers to a loan that may not be repaid in full. In practice, professionals called upon to make such a distinction will rely on administrative or accounting conventions prevailing in the country involved. *See generally* Adriaan M. Bloem & Cornelis N. Gorter, *The Treatment of Nonperforming Loans in Macroeconomic Statistics* (IMF Working Paper, Dec. 2001). In this Article, the authors will use the term in the broad sense, but will also cite the specific classification standard where appropriate.

[35] Being state vehicles, Asset Management Companies are effectively funded by taxpayers.

[36] *See generally*, Chaipravat & Hoontrakul, *supra* note 31.

[37] *See* BANK OF THAILAND, CORPORATE DEBT RESTRUCTURING: LESSONS FROM THE AFTERMATH OF THAI ECONOMIC CRISIS 12 (Tumnong Dasri ed., 1st ed. 2001).

[38] *Id.* at 1.

In response to the 1997-98 Crisis and in cooperation with the International Monetary Fund, Thailand created a national agency with the goal of disposing assets of failed financial institutions, including NPLs and their related security rights, to potential investors.[39] The resulting agency, the Financial Sector Restructuring Agency ("FRA"), was created in 1997.[40]

In addition, many structural and organizational changes were introduced in the Thai legal system to handle both the short- and long-term impacts of NPLs. For instance, shortly after the creation of the FRA, a set of new regulations was added to the Thai Securities Law to facilitate the FRA sale of such assets. This effectively allowed unprecedented levels of foreign ownership of Thai assets through the use of special purpose vehicles empowered to purchase and hold FRA assets.[41]

Other official efforts to resolve NPLs included measures to facilitate voluntary debt restructuring (or "private workout")[42] in the corporate sector through the establishment of the Corporate Debt Restructuring Advisory Committee ("CDRAC"). CDRAC was chaired by the Governor of the BOT and included representatives from local and foreign financial associations.[43] Another critical change to cope with the NPL epidemic was the amendment of key provisions of the Thai Bankruptcy Act. As a result of such

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[39] For an excellent summary of the macroeconomic backdrop of the 1997-98 Crisis in Thailand and the role of the International Monetary Fund ("IMF") in relation thereto, see Lindgren et al., International Monetary Fund, *Financial Sector Crisis and Restructuring: Lessons from Asia*, at 93, IMF Occasional Paper 188 (2000). For a more detailed analysis of the financial crisis and Thailand, see AMMAR SIAMWALLA, ANATOMY OF THE THAI ECONOMIC CRISIS, IN THAILAND BEYOND THE CRISIS (Peter C. Warr ed., forthcoming), *available at* http://www.info.tdri.or.th/reports/subj_ind.htm.

[40] *See* Lindgren et al., *supra* note 39, at 31.

[41] This is in reference to the Thai Securities and Exchange Commission regulations that pertain to the establishment, qualification, and other requirements to maintain a group of funds that aim to attract institutional investors to invest in NPLs and related assets of failed Thai financial institutions, namely the Property Fund for Resolving Financial Institution Problems and the Mutual Fund for Resolving Financial Institution Problems. These vehicles are commonly known in structured-product circles simply, and respectively, as the "Type 2" and the "Type 3" funds. For the specific text of the regulations, see the Securities and Exchange Commission Notifications Kor. Nor. 15/2541 and Kor. Nor. 16/2541, both dated May 24, 1998, and their subsequent related regulations (available online in the Thai language at the Thai SEC website at http://capital.sec.or.th/webapp/nrs/nrs_search.php?ref_id=99). For a general description in the Thai language of the characteristics and benefits of these funds, as well as other Thai mutual funds, refer to the Thai SEC website at http://www.sec.or.th/th/asset/mutual/edu/edu_mf.shtml.

[42] "Private workout" is a term loosely referring to the out-of-court negotiation process between lenders and borrowers to restructure loan terms.

[43] *See* BANK OF THAILAND, CORPORATE DEBT RESTRUCTURING: LESSONS FROM THE AFTERMATH OF THAI ECONOMIC CRISIS 46-47 (Tumnong Dasri ed., 1st ed. 2001). For a more detailed discussion in the Thai language regarding the function of the Corporate Debt Restructuring Advisory Committee ("CDRAC"), see *id.* at 46-83.

amendments, institutional lenders are now allowed to extend loans to debtors with recoverable businesses experiencing short-term illiquidity.[44]

Finally, to compliment the various efforts to resolve Thai NPLs as described above, the Thai Asset Management Corporation ("TAMC"), a central debt resolution entity, was established in June 2001. Much has been made of the political aspect of the establishment of the FRA and the TAMC,[45] as the former was perceived as selling large portions of Thai assets to foreign investors while the latter was portrayed as a patriotic savior of Thai-owned businesses. Where the FRA had viewed asset sales as its priority, the TAMC was organized to assume a wider range of debt resolution efforts that included not only loan asset sales, but also supervision of private workouts as well as altering borrowers' corporate financing structure when necessary.[46]

What was the role of consumer loans in the 1997-98 Crisis and what happened to such loans afterwards? Compared to other countries that were severely affected by the 1997-98 Crisis, consumer or individual loans made up a substantially smaller portion relative to business loans in Thailand's total NPL pool.[47] Because of uncertainties during the first few years following the 1997-98 Crisis, existing local banks initially reduced lending to preserve their capital and liquidity.[48] Thus, consumer loans have neither played a critical role, nor became a significant NPL concern, during the few years following the 1997-98 Crisis.[49]

The lending climate changed markedly in 2001, however, when several factors began to contribute to the growth in the personal loan market. This growth eventually surpassed individuals' income growth.[50] One factor contributing to a broader access to capital included increases in market

[44] *See* PRARACHABANYAT LOMLALAI [THAI BANKRUPCTY ACT AND AMENDMENTS] Por. Sor. 2483, Por. Sor. 2541, Por. Sor. 2542, Por. Sor. 2543 (referencing the amendments made in 1998, 1999, and 2000). The specific reference to the example given is Article 94(2) of Bankruptcy Act, which was amended by the Bankruptcy Act (No.5) (B.E. 2542) in 1999 (the "1999 Amendment"). Prior to the 1999 Amendment, Article 94(2) provided that an unsecured creditor may not collect from a debtor when a loan was extended with the knowledge that the debtor is debt-ridden. This language prevents lenders from extending loans to debt-ridden debtors who may otherwise possess a good degree of recovery potential.

[45] The Financial Sector Restructuring Agency ("FRA") was established under the government headed by the Democrat Party while the Thai Asset Management Corporation ("TAMC") was established under the government headed by the Thai Rak Thai Party.

[46] For a discussion of the objectives of the TAMC, see About TAMC, http://www.tamc.or.th/page/front_en/know/index.php (last visited Dec. 3, 2007). Thai political observers may find it noteworthy that, while giving a broad background to the crisis, the page does not mention FRA.

[47] Individual loans made up fifteen percent of the total NPL pool at the time. *See* Chaipravat & Hoontrakul, *supra* note 31, at 20.

[48] *Id.* at 16.

[49] For a comparison of levels of consumer loan NPLs between 1999 and 2001, see *supra* note 37.

[50] *See* Thaicharoen et al., *supra* note 14, at 24.

efficiency, such as more market entrants and the establishment of central credit bureaus.[51] Another factor was an increase in lending supply, as represented by larger pools of liquid funds from existing banks and the proliferation of non-banks offering credit card services.[52] Keen observers of Thai politics also noted that the turning point in this trend was largely due to the arrival of the ruling party Thai Rak Thai,[53] whose election campaign rhetoric and policy initiatives often promised, essentially, broader access to capital for a greater number of consumers.[54]

While the NPL problems in Thailand resulting from the 1997-98 Crisis centered mostly on commercial credit, the subsequent changes in lending and in the political landscape that are discussed above have created a burgeoning consumer credit market much like that in South Korea.

2. South Korea's Response to Non-Performing Loans: Korea Asset Management Corporation and the Bad Bank and Harmony Program

South Korea is widely touted as one of the more successful cases of a country resolving its NPL epidemic following the 1997-98 Crisis. Korea's success was due in large part to the reconstitution of the Korea Asset Management Corporation ("KAMCO") which was established, designated, and financed to efficiently resolve South Korea's NPL problem and to manage government-owned assets.[55] Following the 1997-98 Crisis, KAMCO purchased and pooled a large number of KRW-denominated NPLs from various troubled domestic institutions. This action helped to create a market for NPL buyers in Asia who were looking to purchase such NPLs

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51 *Id.* at 14.

52 *Id.*

53 The party's name translates into English as "Thais Love Thais."

54 There are various interpretations of the "broader access to capital" policy, or rather, group of policies announced by the Thai Rak Thai Party. The two polar-opposite views with respect to these policies are 1) that such a policy is carried out with the goal to foster and expand, at a grass-roots level, entrepreneurship in Thailand; and 2) that such policy is an attempt to lure the poor electorate to enable a few big "Thai family conglomerates" to take over Thai politics. For an example of the former, see H.E. Dr. Somkid Jatusripitak, Deputy Prime Minister and Minister of Finance, Address at the United Nations-ESCAP, Bangkok: Microfinance Policy and Governance (Mar. 6, 2002), *available at* http://www.mof.go.th/mof_speech/mof_speech_06mar45e.htm. For an example of the latter, see Pasuk Phongpaichit & Chris Baker, *Pluto-Populism in Thailand: Business Remaking Politics*, *in* POPULISM AND REFORMISM IN SOUTHEAST ASIA: THE THREAT AND PROMISE OF NEW POLITICS (Eva-Lotta E. Hedman & John T. Sidel, eds., forthcoming), *available at* http://pioneer.netserv.chula.ac.th/~ppasuk/papers.htm.

55 Prior to such reconstitution, Korea Asset Management Corporation ("KAMCO") was primarily used for the purchase and sale of Korean real estate. *See* Korea Asset Management Corporation, http://www.kamco.co.kr/eng.html (last visited Dec. 5, 2007).

denominated in various Asian currencies by investors based in Asia and elsewhere, which were notably comprised of foreign financial institutions.[56]

The KAMCO has two sources of funds: a Non-Performing Asset ("NPA") fund and KAMCO's own assets. The NPA fund was used primarily to buy and sell NPLs from domestic financial institutions following the 1997-98 Crisis, and ended its mandated period[57] in the fourth quarter of 2003.[58] In this process, KAMCO first examines a debtor's assets to determine whether sufficient income exists to repay owed debt obligations.[59]

Since 2003, KAMCO has expanded its service to meet greater needs for managing credit delinquency.[60] In 2004, KAMCO launched Bad Bank and Harmony ("Bad Bank") as one of the programs implemented in accordance with the Korean Ministry of Finance and Economy's policy to help individual credit delinquents. Two other related and relevant individual debtor rehabilitation programs are the Credit Counseling and Recovery Service and the Credit Bank, which are run separately and independently from each other and from the government.[61]

Bad Bank worked as a virtual fund and a system established by a consortium of 620 domestic financial institutions and KAMCO.[62] KAMCO was the actual body which carried out all the administrative duties of the Bad Bank program, such as entering into contracts between financial institutions and debtors; restructuring and refinancing debts; issuing new longer-term, lower-interest loans; and carrying out loan collection and recovery services.[63] Bad Bank was a temporary program whose first period application acceptance ended on November 22, 2004; the program began in May of the same year.[64]

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[56] For further information on KAMCO's comprehensive report on managing NPLs, see *2004 Nyun Balgan Busil-chaekweon-jungri-gigeum-baekseo*, *available at* www.kamco.or.kr (navigate to Jahroh Mahdang Gongeh- jahroh-sil) (last visited Oct. 28, 2007).

[57] KAMCO has operated its program to help individual debt relief with KAMCO's own funds since 1998. This program continues to operate.

[58] Conversation, on a no-name basis, with an officer at *Shinyong Jiwon Il-Team* [Consumer Loan Management Dept. 1], KAMCO, Feb. 21, 2005.

[59] *See* Korea Asset Management Corporation, http://www.kamco.co.kr/eng.html (last visited Oct. 28, 2007).

[60] *See supra* note 55 (select "Business Areas" tab; then in the left pane select "Support of Consumer Credit Recovery"; then select "OnCredit" and "Bad Bank").

[61] Telephone interview with Korean Ministry of Finance and Economy officer, Feb. 18, 2005.

[62] *See supra* note 55 (select "Business Areas" tab; then in the left pane select "Support of Consumer Credit Recovery"; then select "OnCredit" and "Bad Bank").

[63] *Id.*

[64] CreditBank, http://www.creditbank.co.kr/credit/creditcover.cb?m=badBankProgram (last visited Aug. 2, 2007).

B. Consumption-Driven Growth: The Road to Recovery from Crises

The previous section described how both the Thai and South Korean governments tried to resolve the NPL epidemic in part through the creation of national asset management companies, TAMC and KAMCO respectively. This section describes how both governments also tried to spur domestic consumption through various "cheap credit" initiatives and legislative measures following the 1997-98 Crisis.

1. Thailand: Lowering the Income Floor for Credit Card Applicants

As in Korea, Thai consumers were ushered into the credit card era as a result of the Thai government's efforts to stimulate a consumption-led recovery from the 1997-98 Crisis. Prior to the 1997-98 Crisis, Thais were relatively similar to Koreans in their generally "prone-to-saving" behavior with respect to earned income.[65] To induce consumers to borrow and spend, the BOT lowered the minimum monthly income requirement for a credit card applicant from THB 15,000 (approximately USD 375) to THB 7,500 (USD 187) in 2002, a move that triggered a sharp increase in the number of credit cards issued.[66] Although the BOT reversed course later the same year, the circulation of credit cards in Thailand nevertheless reached 9.9 million by the end of the fourth quarter of 2005, a more than six-fold increase since 1999.[67] Between 1999 and 2004, total outstanding credit card balances more than doubled to THB 122.18 billion (about USD three billion).[68] To address this increase in debt, the BOT issued new regulations in 2004 requiring a monthly debt servicing ratio of no less than ten percent of an individual's total outstanding balance and a credit line ceiling of five times an individual's average monthly income.[69]

Nevertheless, changes in government regulations figure prominently in the increase of the number of less disciplined credit consumers with credit cards. A sharp 76% one-year rise in credit card outstanding balances occurred in 2002 when the minimum income requirement for a credit card

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65 *See* Kobsak Pootrakul, Kiatipong Ariyapruchya & Thammanoon Sodsrichai, *Long-Term Saving in Thailand: Are We Saving Enough and What Are the Risks?* (Bank of Thailand Discussion Paper, 2005). The study indicates a decline in household saving trends. The authors find that this decline is substantially attributable to the decline in the average propensity to save, as opposed to the decline in the household share of national income. To generalize, this seems to suggest that Thai consumers save less than before not because they earn less but because they just have a behavioral tendency to save less.

66 *See* BANK OF THAILAND, PAYMENT SYSTEMS REPORT 24-25 (June 2003).

67 Bank of Thailand, *supra* note 15.

68 *See* Thaicharoen et al., *supra* note 14, at 21.

69 *See* 2004 BOT Regulation, *supra* note 17, §§ 4.5, 4.7.

was reduced from THB 15,000 to THB 7500.[70] Additionally, a recent survey conducted by the National Economic and Social Development Board, a Thai government think tank agency, concluded that cardholders with a monthly income below THB 10,000 typically carried a monthly balance on their cards.[71] Finally, almost every occupational group surveyed by the Thai National Statistical Office from 2002-2004 reported higher debt to income ratios.[72]

Although data from a recent BOT study suggests that the number of NPLs resulting from credit card loans still remains low, the study cautiously noted that such NPLs may become more conspicuous over time.[73] In fact, present factors may not figure fully into the household debt picture until as long as three years after their initial origination.[74]

2. South Korea: From Lack of Consumer Spending to Overspending

One of South Korea's main problems in 1997-98 was a lack of consumer spending to revive its domestic economy.[75] To boost consumer spending, South Korea began a series of disparate government initiatives to promote the mass issuance of credit cards to individuals from 1999 onwards.[76] The solution of offering credit cards to boost consumer spending, however, brought the unforeseen problem of a consumer credit binge hangover. Korea's current economic dilemma comes not from the failure of its earlier plans, but from their overabundant success.

The past decade has been full of signs indicating the emerging trend of excessive credit card spending. For example, in late 2002, over the course of the three short years since the government's 1999 credit card

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[70] *See* Bank of Thailand, *supra* note 15. The outstanding balances are THB 41 billion at the end of the fourth quarter of 2001 and THB 72 billion at end of the fourth quarter of 2002.

[71] *See* Chatrudee Theparat, *NESDB Concerned About Debt*, BANGKOK POST, Mar. 21, 2005.

[72] *See* Thaicharoen et al., *supra* note 14, at 24.

[73] NPLs may become more conspicuous over time due to factors such as delay in reporting by banks. *See id.* at 26.

[74] *Id.* at 26.

[75] *See* Asia Development Outlook website, http://www.adb.org/documents/books/ado/2003/kor.asp (last visited Nov. 5, 2007).

[76] For a paper focusing more on firm-level credit problems, see Eduardo Borensztein & Jung-Wha Lee, International Monetary Fund, *Financial Crisis and Credit Crunch in Korea: Evidence from Firm Level Data*, at 5, 9, IMF Working Paper No. 00/25 (Jan. 2000). The paper argues that following the 1997-98 Crisis, credit was reallocated away from large Korean conglomerates (*chaebol*) to more "efficient" firms. *Id*. For a more political-economic perspective on the Korean 1997-98 Crisis, see generally STEPHAN HAGGARD & JONGRYN MO, THE POLITICAL ECONOMY OF THE KOREAN FINANCIAL CRISIS 197-218 (Routledge Press 2000). In their text, the authors argue that the 1997-98 Crisis was caused by, first, a greater liberalization between state and business, and second, a timing conundrum in which the crisis occurred at an election year, which may have added both to its depth and severity. *Id*.

initiative, Koreans went from having very few or no credit cards to having an average of nearly four credit cards per person.[77] New lines of credit quickly translated into increased consumer spending and increased gross domestic product ("GDP"). In 1999, South Korean GDP grew by an extremely robust 10.9%, followed by 9.3% in 2000.[78] Although such growth was obviously not entirely attributable to Korea's 1999 credit card initiatives, a certain portion of such growth can be attributed to such policies.

It is also important to note that there are many differences between the Korean and Thai credit card markets today, particularly from the regulatory perspective.[79] Unlike its Korean counterpart, the Thai government has yet to provide its consumers such use incentives as Korea's credit card tax deduction. Once Thai applicants are approved for credit cards, not only will extra benefits not be provided,[80] but new cardholders will be subject to a stricter 2004 BOT Regulation.

C. The Rise of Credit Card Debt Resulted from Consumption-Driven Policy Initiatives

Following the 1997-98 Crisis, the government cheap credit initiatives led to a dramatic credit card spending hangover in both South Korea and Thailand. In South Korea, domestic consumers began to spend at such high levels that credit card usage went far beyond many individuals' repayment capacity.[81] By late 2003, South Korea's economy was weighed down with

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[77] Larkin, *supra* note 2; *see also* Asia Development Outlook website, http://www.adb.org/documents/books/ado/2003/kor.asp (last visited Nov. 5, 2007).

[78] Jahyeong Koo & Sherry L. Kiser, U.S. Federal Reserve Bank of Dallas, *Recovery from a Financial Crisis: The Case of South Korea*, ECON. & FIN. REV. 25 (2001).

[79] Although the Thai government does indeed support retail borrowing through the use of credit cards, the difference may lie in what happens after a Thai resident is accepted for a credit card.

[80] A good example of how different the card-friendly policy could be in the Korea-Thai comparison is this ironic regulatory twist: while Koreans may have tax incentive to increase their use of credit cards, if a Thai cardholder chooses to pay his tax through a credit card to the Thai Revenue Department (or other fee-charging public offices), such holder will incur additional cost from doing so. This is as a result of the Bank of Thailand Circulars ThorPorTor. ForNorSor. (21) Wor. 768/2549 and ThorPorTor and ForNorSor. (21) Wor. 769/2549, Re: Fees for Payment of Taxes and Duties to the Revenue Department by Credit Cards, both dated June 14, 2006, which allow the bank and non-bank credit card operators to pass on to the holder the service fee normally charged to commercial retailers when credit cards were used as a payment method.

[81] As background, South Korean households went from being largely debt free in 1997-98 to holding an average of USD 27,000 in debt per household in less than six years. Almost four million Koreans have defaulted on credit-card debt and household loans, a figure representing close to ten percent of the country's population. The result has been more than USD 375 billion in household debt. One example of the dire effects relating to the credit card crisis is LG Card (South Korea's second largest credit card company at the time), which collapsed in 2003, creating great concern in Korea about rising consumer debt and the fear of massive defaults. LG Card had started to rationalize its operations by disposing of some of its investments, including a two percent stake in LG Investments, estimated to be worth about USD 149 million. The

approximately USD 100 billion in credit card debt (not including personal loan debt obligations).[82] Further, by December 2003 approximately 3.7 million South Korean consumers were delinquent on debt payments by three months or more.[83]

Focusing on consumer loans, Thai borrowers were substantially less leveraged than their Korean counterparts as Thailand's household debt to GDP ratio fell to thirty-three percent in 2003, compared to Korea's ratio of nearly seventy-five percent.[84] Individual credit card balances only accounted for less than three percent of the total Thai household debt outstanding balances in 2003.[85] To complete the Thai debt cycle picture, NPLs resulting from credit card debt remained below five percent of total outstanding household loans from 2001 to the first quarter of 2004.[86]

One may need to consider other additional factors before comparing borrowing behavior in the two countries. The most notable factors are the more advanced stage of the "credit card ready" Korean retail culture and the network of "informal" channels of access to loans available to Thais for personal consumption purposes.[87] These factors may suggest that Thai borrowers are not less susceptible than their Korean counterparts to borrowing heavily for personal consumption purposes because credit cards are not as readily accepted in Thailand as in South Korea.

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struggling LG Card Co. received a vote of confidence after U.S. broker Merrill Lynch announced on August 5, 2004 that it would buy USD 400 million of asset-backed bonds issued by LG Card. *See* Larkin, *supra* note 2.

From the authors' perspective, the South Korean government encouraged the growth of credit cards to boost consumer spending shortly after the 1997-98 Crisis but paid a heavy price in defaults. Credit card companies and banks extended credit with little concern for repayment risk in the knowledge that the government wanted to increase debt spending, with the strong implication that credit was tacitly underwritten by the national treasury. Further, in 2003, new legislation was passed mandating that credit card firms curb their credit allocations, insist on credit checks, and temper cash loans. The regulation is known as the Regulation on Supervision of Credit-Specialized Financial Business (of which Chapter V relates to consumer protection and preservation of credit order).

[82] Larkin, *supra* note 2.

[83] *See* World Bank website, http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/Korea+April+2004/$File/Korea+April04.pdf (last visited Nov. 5, 2007).

[84] *See* Thaicharoen et al., *supra* note 14, at 26. The Thaicharoen paper however cites the data from the second quarter of 2003, which for South Korea the household debt as part of GDP is quoted at 62%. *Id.*

[85] *Id.* at 56.

[86] *Id.* at 25.

[87] *Id.* at 18-19. According to a survey conducted by the National Statistical Office (during the first quarter of 2004), fifteen percent of total households borrow from informal creditors, and more than fifteen percent of these informal debtors pay monthly interest of five to twenty percent (or 60-240% annually). *Id.*

D. The Cultural Shift that Existed from Traditional Credit Constraints Toward Materialism

The clash of cultures that existed within both modern South Korea and Thailand parallels traditional Confucian and Buddhist tenets. Specifically, the idea of minimizing present consumption was put on a direct collision course with the consumer credit policies enacted after the 1997-98 Crisis. Such policies allowed many individuals to spend now and pay later for various material goods, which fueled credit card spending in both economies.

1. The Clash Between South Korea's Confucianism and Consumerism

South Korea's credit card epidemic was, in large part, unforeseeable in a conservative nation still largely based on traditional Confucian values.[88] In part due to such ideals, the Korean government seemingly presumed that the potential of public dishonor brought by bankruptcy would act as a brake on consumer spending.[89] At the same time, until a proposed credit rating scheme was established in 2006,[90] no credit rating system existed in South Korea to assess the credit risk of individual borrowers, such as the systems in many other developed economies. This further aggravated the nation's credit card spending hangover.

Despite traditional cultural norms, the sudden availability of unsecured credit lines, which could be spent at any time, proved very popular.[91] Additionally, because of the combination of the 1999 initiative, absence of detailed personal credit history information, and rigid privacy laws, credit cards could be obtained by many Koreans with minimal or no credit checks. Thus began the credit card spending binge that rapidly transformed into South Korea's current and ongoing credit card hangover.

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88 *See* LAURA C. NELSON, MEASURED EXCESS: STATUS, GENDER, AND CONSUMER NATIONALISM IN SOUTH KOREA 107 (Columbia University Press 2000).

89 However, countering such traditional ideals that stemmed in large part from the Korean Chosun period (1392-1910) were post-1997-98 modern Korean society individual demands and materialistic needs. Specifically, many Koreans, including many younger Koreans, saw credit cards as a relatively easy way to obtain formerly unobtainable high-priced luxury goods.

90 Na Jeong-ju, *New Credit Rating System to Affect 28 Million,* KOREA TIMES, 2006, *available at* http://search.hankooki.com/times/times_view.php?term=credit+rating++&path=hankooki3/times/lpage/biz/200612/kt2006121018044011910.htm&media=kt. The new credit rating system was conceived by the Korea Credit Bureau ("KCB"), which provides for a so-called "KCB Score Model" to calculate credit scores for individuals that is projected to affect 28 million people. According to one KCB official quoted in the article, "So far, banks have had different credit standards for individuals." *Id.*

91 *Id.*

Table 1 below details the spike in credit card delinquency levels following the government's 1999 initiatives.[92]

Table 1. Delinquency Rates by Credit Card Provider.[93]

Credit Card Provider	*Percentage in 2002*	*Percentage in 2003*
BC	7.53	8.78
LG	5.86	17.9
Samsung	4.91	10.59
Foreign Exchange	6.64	12.19
Hyundai	13.09	8.05
Lotte	20.08	3.47
Woori	6.32	22.31
Shinhan	5.25	6.14
Total	5.96	14.05

2. *Thailand's Internal Clash Between Buddhism and Materialism*

Similar to the tension between Confucianism and consumerism in Korea, there is a collision of trends in Thailand between traditional consumption culture rooted in Buddhism, which deemphasizes the accumulation of one's worldly possessions,[94] and the newer post-1945 trend that views accumulated wealth as the manifestation of one's achievement.[95]

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[92] *See also* ASIAN DEVELOPMENT BANK, ASIAN DEVELOPMENT OUTLOOK 2005 22, Fig. 2.3 (2005), http://www.adb.org/Documents/Books/ADO/2005/kor.asp (last visited Dec. 17, 2007) (graphically comparing household income to debt burden in Korea from 1995 to 2003).

[93] Financial Supervisory Service, http://www.fss.or.kr/kor/nws/nbd/bodobbs_v.jsp?seqno=8591&no=24&gubun=01&menu=nws010200 (select "Credit Card Company Records"; data can be found on page six of the downloaded file) (last visited Dec. 17, 2007).

[94] It is difficult to pinpoint the specific source of this concept that is specifically applicable to the traditional Thais. *See* BUDDHADASA BHIKKHU, HANDBOOK FOR MANKIND (Ariyananda Bhikkhu & Roderick Bucknell, trans., Dhammadana Found. 1996), *available at* http://www.buddhanet.net/budasa2.htm. This is a seminal work from one of the most revered teachers of Buddhism in Thailand, which contains a logical articulation of the concept: "Why then are we taught to regard things as not worth getting or being? The answer is this: the concepts of getting and being are purely relative; they are worldly ideas based on ignorance. Speaking in terms of pure reality, or absolute truth, we cannot get or be anything at all. And why? Simply because both the person who is to do the getting and the thing that is to be got are impermanent, unsatisfactory (suffering) and nobody's property." *Id.*

[95] There is a famous saying in Thailand and its continuing popularity seems to earn it the status of undisputed truth: "Ngan Kue Nguen, Nguen Kue Ngan; Bandarn Suk" (literally, "work is money, money is work, [both shall] bestow happiness [upon a person])." While the saying is hardly an explicit pronouncement of Thai materialism, its logic seems to suggest an undeniably attractive and consoling link between money and happiness, as separated from any intrinsic values of working hard.

The data from the same BOT study, which singles out professional employees as a group that has the highest amount of household debt compared to other occupations,[96] may point to the stronger influence of the latter materialist trend by suggesting that easy money translates to visible achievement, especially at the workplace where employees spend a majority of their time.[97]

Would the next NPL explosion in Thailand be shepherded by credit card consumers? Being a society that values achievement through ability to exhibit wealth, the current credit market seems to suggest that overspending is not only tempting, but may also be inevitable. The survey conducted by the National Economic and Social Development Board seemingly supports this notion by showing that a group of credit card applicants earning less than USD 200 a month will accumulate large debt levels, as well as other material possessions which they were once taught to refrain from accumulating.[98]

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[96] *See* Thaicharoen et al., *supra* note 14, at 24.

[97] This also, arguably, is the area where notable pressure exists to exhibit material achievement within both Thai and Korean society and culture.

[98] Alternatively, is this notion simply a pessimistic view not supported by current data? Up to this point, this Article has illustrated that Thailand and Korea have shared similar traits with respect to the financial crisis-ridden economic landscape, governmental measures in addressing the crisis in cooperation with the IMF, and certain credit constraints and consumption culture. Several data sets, however, seem to indicate that Thai consumers are not headed in the same direction as their Korean counterparts. First, the BOT NPL data shows NPLs categorized in terms of personal consumption loans as a percentage of total NPLs in 2005 at its lowest level in five years. A study by Visa International, who at the time claimed more than 80% market share of the Thai credit card market, demonstrated that the Thai delinquency rate has moved in the opposite direction to that of Korea. The delinquency rate has declined sharply after the 1997-98 Crisis, peaking at 37% in the fourth quarter of 1998 but continuing a downward move to 4% in the fourth quarter of 2003. VISA, THE CREDIT CARD REPORT: CREDIT CARD USE AND DEBT IN THAILAND, May 2004, http://www.visa-asia.com/ap/center/valueofvisa/industrywatch/includes/uploads/Thailand_Credit_Card_Report.pdf (last visited Oct. 31, 2007). Finally, as shown in Table 2 below, the growth of outstanding credit card balances in Thailand exhibits a peak in 2002 that ends in 2005 with a five-year low growth rate. *See generally* Bank of Thailand, NPLs Outstanding, Loans to Related Parties, Fine and Summary Statement of Liabilities and Assets, http://www.bot.or.th/bothomepage/databank/Financial_Institutions/Npl_Fi/Npl_Fi_E.htm (last visited Oct. 31, 2007).

In addition, BOT data also shows the worrisome trend that personal consumption NPL levels have also increased since the 1997-98 Crisis, with a peak in November 2003 representing more than 20% of total NPLs. *Id*.

Table 2. Credit Card Outstanding Balances in Thailand.[99]

	1999	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Outstanding Balance (billion THB)	33.6	32.5	41.0	72.5	94.3	118.4	143.4
Year-on-Year Percentage Increase		-3.1	26	77	30	25	21

IV. THE PROPOSED HANGOVER SOLUTION: BAILOUT VS. PREEMPTION

In light of the economic and cultural landscape of the credit card markets in Thailand and South Korea after the 1997-98 Crisis, this section will discuss how the two governments are dealing with the aftermath of the consumption-driven initiatives that resulted in the upsurge of credit card debt in both countries. Specifically, this section describes South Korea's IDRA, which the authors consider representative of the approach to "bailout" borrowers. The section will then discuss Thailand's 2004 BOT Regulation, which the authors consider representative of the approach to "preempt" potentially bad borrowers from entering the market. Thailand also launched the PDRM, a debt relief measure essentially meant to bailout borrowers but not applying to credit card borrowers. We will also discuss this measure in comparison with South Korea's IDRA in order to highlight their similarities and differences.

A. *Individual Debtor Rehabilitation Act: South Korea's Bailout Attempt of Debtor Delinquents*

The South Korean government's proposed solution to its new consumer excess spending problem came in the form of the IDRA. The IDRA effectively provided a rehabilitation program for individual debtors at the risk of individual bankruptcy, for those debtors who could demonstrate consistent income earning capacity.[100]

Eligibility for IDRA is limited to those who will receive a set amount of salary.[101] Coverage for individual debtors is limited to KRW 500 million (approximately USD 500,000) for unsecured debt[102] and KRW one billion

[99] *See* Bank of Thailand, *supra* note 15. The outstanding balance amounts are taken from the fourth quarter of each specified year. The year-on-year increases are the author's calculation.

[100] For a non-comparative overview of IDRA focusing on Korea only, see Jasper Kim, *Resolving South Korea's Credit Card Hangover: An Analysis of the Individual Debtor Rehabilitation Act*, 31 N.C. J. INT'L L. & COM. REG. 431 (Dec. 2005).

[101] *See* Individual Debtor Rehabilitation Act, art. 1 [hereinafter IDRA].

[102] "Unsecured debt" refers to a debt obligation that is not collateralized. *See id.* art. 48.

(approximately USD 1,000,000) for guaranteed debt.[103] The IDRA effectively rescues certain individual debtors,[104] while at the same time protecting certain creditor interests.[105] Prior to the IDRA, Korean bankruptcy law forgave debtors completely but at the cost of future exclusion from the consumer credit market.[106] Under the IDRA, affected parties such as creditors may lodge an immediate appeal within fourteen days following the court's sentence[107] and may appeal[108] thereafter in the event that the debtor applicant is dissatisfied with the court's decision.[109]

In terms of procedural issues, the IDRA process begins when the debtor applies for IDRA consideration and certain required IDRA-related documents are submitted to the relevant local court.[110] The debtor in need of IDRA protection must apply directly to the court that has jurisdiction over the debtor's residence.[111] If the debtor has no official residence, the location of the debtor's property determines local court jurisdiction.[112]

The IDRA applicant should submit the application in writing, detailing relevant information, such as the debtor's name and Korean identification number, the reason and purpose for applying, and the property and credits of the debtor.[113] Also, the applicant should attach 1) a list of creditors with their name, address, and the amount and reason of the credit; 2) a list of properties owned; 3) a list of the debtor's income and spending; 4) related documents, in the event that the applicant has previously applied

[103] "Guaranteed debt" refers to debt obligations that have a guarantor feature such that in the event that any payment obligation is not made as scheduled the guarantor may be liable to "step into the shoes" of the debtor and make one or more outstanding payments. *See id.*

[104] *See id.* art. 2 (explaining the sources of the "incomes" of the candidates).

[105] *See generally id.* art. 1.

[106] Under Korean bankruptcy law existing during this period relating to individual bankruptcy (gyein pahsahn pahsahn, 개인파산; sohbeijahpahsahn, n, 개인파산 소비자파산), when an individual consumer fails to repay owed debts, the court, as a compulsory measure, liquidates all of the debtor's properties towards creditor repayment. One distinguishable difference between IDRA and Korean bankruptcy law at that time can be seen within the sections relating to the granting of immunity. For example, under the current Korean bankruptcy law, all debtor-owned property is disposed of by the court before the debtor receives immunity vis-à-vis a court decree. Yet, under IDRA, the debtor does not need to dispose of all properties to receive such immunity from the court. Moreover, evidence in the form of official records reflecting the debtor's default will exist until such immunity is granted, while the debtor under the IDRA rehabilitation process does not have such disadvantages. Recently, the Korean legislature was in the process of consolidating its bankruptcy, whereby both individual and institutional parties may be covered.

[107] *See* IDRA art. 11.

[108] In this case there is a supervision committee established pursuant to HYOESA JEONGRI BUHP [CORPORATE REARRANGEMENT ACT] art. 93(2) (Kor.). This committee can evaluate the process of the Act during the trial process. *See* IDRA art. 13(1).

[109] *See* IDRA art. 12.

[110] *See id.* art. 49.

[111] *See id.* art. 3(1).

[112] *Id.*

[113] *Id.* art. 49.

for individual bankruptcy (under the existing Korean bankruptcy law) or IDRA relief; 5) data that attests to the fact that the debtor is an employer or a business owner; and 6) other documents which the Supreme Court deems necessary and relevant to the process.[114] Also, the applicant should pay the process expenses in advance, the amount[115] of which is decided by the Supreme Court. Once the debtor submits the application, the court considers whether the candidate is qualified pursuant to IDRA.[116] Within fourteen days after the debtor's IDRA application is submitted, the debtor submits a proposed repayment plan to the court.[117] Thereafter, the court has until one month from the initial application date to determine whether to accept or reject the IDRA application.[118] In the event that the application is accepted, any party that has a related interest to the specific proceeding can file an application stating such related interest[119] within fourteen days following public notice of the court's ruling.[120]

Even if the debtor complies with the court-approved schedule and fully discharges all of his or her debts within eight years, the debtor is still liable for certain charges.[121] Such charges may include relevant surplus charges, penalty fees, damages due to unlawful conduct, and duties to employees such as unpaid salary or retirement pay.[122] In the event of debtor bad faith through fraud in reporting the total amount of the debtor's property or any actions that cause damage to the lender, the entire IDRA restructuring process may become void, and the debtor may face either a maximum of five years imprisonment (i.e., criminal prosecution) or USD 50,000 in fines (i.e., civil prosecution).[123]

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[114] *Id.* art. 49.

[115] *Id*. art. 50.

[116] IDRA Article 1 states: "The IDRA is designed to effectively rescue those who are suffering by financial bankruptcy, yet they have potential to continuously and repeatedly earn incomes in the future." *Id.* Art. 1.

[117] *See id.* art. 70.

[118] *Id.* art. 55.

[119] *Id.* art. 11.

[120] If the application is accepted, pursuant to Article 13, the court can organize a supervision committee which effectively supervises the entire IDRA-related process with the local court. *See* IDRA art. 13. Thereafter, pursuant to Article 62, the rescue committee (which focuses on IDRA's content, such as overseeing the debtor's repayment plan schedule) investigates the debtor's properties and income. *See* IDRA art. 62. Pursuant to Article 24, clause 1, the designated local court then determines the debtor's asset amounts, such as the properties owned by the debtor (referred to as "Individual Rescue Property"), and determines the amount of credits the debtor holds (referred to as "Individual Rescue Credits" and "Individual Rescue Institutional Credits"). *See* IDRA art. 24(1). The court then examines the debtor's "repayment plan."

[121] *See* IDRA art. 84.

[122] *Id.* arts. 84, 87.

[123] *Id.* art. 87.

Being subject to the IDRA process means that the debtor (the applicant for the IDRA process) should repay a specified amount of his or her debt obligations.[124] Currently, however, the IDRA legislation is silent as to what the minimum level of debtor repayment should be. Presumably this issue is under the local court's discretion.[125] Therefore, it is necessary for the local court to clarify what properties and income should be used for repayment and what should not be used for such repayment.[126] IDRA provisions provide that most income and properties except for six months of living expenses (including housing expenses) are available for such repayment.[127]

The definition of "property" used by the court to calculate a debt repayment plan under IDRA includes 1) all properties owned by the debtor before the start of the individual rescue process,[128] and 2) all properties acquired by the debtor[129] during the individual rescue process.[130] The rationale for this formulation is that more property means more assets that are capable of being liquidated to repay debt obligations.[131]

Properties that are not included under "Individual Rescue Property" are 1) properties[132] that cannot be seized,[133] 2) housing expenses of the debtor and the people supported by the debtor, and 3) six months living expenses for the debtor and relevant persons financially supported by the debtor.

Pursuant to IDRA Provision Eight, creditors can participate in the court's determination of what amounts should be repaid to them under the IDRA process.[134] The IDRA language refers to this process, which can be initiated by request from any relevant creditor, as the "Trial for Settling

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124 *See id.* art. 50.

125 The amount of the repaid debt is designated in the debtor's "repayment plan." The court examines the debtor's repayment plan including, but not limited to, the debtor's income, properties, and owed debt obligations, in determining the amount of repayment the debtor should make pursuant to IDRA.

126 *See* IDRA art. 74.

127 *See id.* art. 25.

128 *See id.* art. 24(1).

129 *Id.* art. 24(2).

130 In the authors' view, the relevance of defining "property" is that the local court will factor in the debtor's asset amounts to determine whether the debtor-applicant has the ability to repay owed debt obligations. The assumption is that the more assets and property owned, the greater the likelihood that the local court may grant IDRA protection.

131 The debtor, under IDRA Article 24, also has the right "to manage or dispose of his/her property." However, the properties that are included as part of the debtor-submitted "repayment plan" must be managed or disposed of per such debtor's repayment plan. *See* IDRA art. 24.

132 IDRA is silent as to exactly what such properties may be.

133 *See* IDRA art. 25(1). For a description of property exempt from IDRA , see IDRA art. 25(2).

134 *See* IDRA arts. 63-65.

Individual Rescue Credit."[135] Specifically, creditors who have any objection[136] about the debtor-supplied list of creditors and debts may request a hearing during the objection period.[137] In this case, the plaintiff is the creditor, and the defendant is the debtor.[138] The local court has discretion[139] to hold or deny such a hearing.[140]

Provision Nine of the IDRA discusses specifics related to the debtor repayment plan.[141] Under this process, the debtor should submit his or her repayment plan within fourteen days following the submitted application for the IDRA process.[142] The repayment plan should contain 1) details of properties and incomes that can be used for repayment, 2) repayment details of the debtor's individual rescue institutional credits and other credits, and 3) repayment details of all or part of the debtor's individual rescue credits.[143]

The court may approve the repayment plan when 1) the repayment plan is suitable[144] to the provisions of the law, 2) the repayment plan is fair and viable, 3) certain IDRA-related administrative fees and expenses are paid prior to the approval of the debtor's repayment plan, and 4) the whole amount of the individual rescue credit estimated until the day of the approval of the court is not less than the amount of debt that the debtor has to pay when seeking bankruptcy protection.[145] In terms of debt repayment creditor priority, the IDRA Rescue Committee is first in line for any payments made by the debtor, which will then be followed by payments[146] to relevant creditors.[147]

While Provision Nine states what is necessary to grant IDRA debtor protection, Provision Ten lists grounds for rejection of an IDRA

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[135] Such trial-related expenses are typically paid for by the affected creditors. *Id.*

[136] Creditors have from two weeks to two months after the court's decision to accept the applicant's repayment plan. *Id.*

[137] *See id.* art. 65.

[138] *Id.* art. 64.

[139] IDRA is silent as to the exact timeframe and criteria for such process.

[140] "Individual Rescue Credits" will be determined based on whether 1) creditors (listed on the creditor list) did not request for a "Trial for Settling Individual Rescue Credit" during the relevant period, or 2) the creditor's request for a "Trial for Settling Individual Rescue Credit" has been rejected by the court. After the amount of the individual rescue credit is determined, the IDRA process may begin.

[141] *See* IDRA art. 71.

[142] *See id.*

[143] *Id*.

[144] IDRA is currently silent as to how the term "suitable" can be interpreted.

[145] However, in this case, the amount of the individual rescue credit can be less than the owed debt amount following the bankruptcy filing, provided that all relevant creditors agree. *See* IDRA art. 74 (1).

[146] In this process, the debtor makes payments to the IDRA-appointed rescue committee (which oversees the entire payout process). Thereafter, the rescue committee makes repayments to the debtor's creditors per the IDRA court-approved repayment plan.

[147] However, this rule does not apply when no rescue committee exists, or when the repayment plan or the approval of the repayment plan is structured such that the rule does not apply. *See* IDRA art. 76.

application.[148] Courts can terminate the IDRA process both before and after the repayment plan is approved.[149] The court may reject applications outright when the debtor provides an unsatisfactory plan, a false basis for relief, or fails to attend an IDRA-related judicial hearing.[150] Even after the court's approval of the debtor's repayment plan, it is possible for the plan to be abolished or amended either by the official authority of the court or by the request of relevant creditors.[151] This may happen when 1) it is evident that the debtor is not able to repay the debts that are provided pursuant to the repayment plan, or 2) the debtor fails to repay owed debts per the court-approved IDRA repayment plan as a direct result of the debtor's illegal conduct,[152] such as concealing his or her property or income.[153]

B. *Thailand: The Preemptive Approach Taken by the Bank of Thailand and the Bailout Approach Taken by the Thai Ministry of Finance*

The 2004 BOT Regulations played a significant role in slowing the growth of credit card balances in Thailand.[154] Although Thailand's PDRM is similar to South Korea's IDRA in that both represent governmental efforts to bail out consumer loan defaulters, the PDRM expressly excludes credit card debts.[155] We therefore conclude that Thailand's dominant regulatory method for coping with increasing credit card debt defaults is the preemptive method as opposed to the bailout method introduced by IDRA.

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[148] *See generally id.* arts. 70, 72, 73, 79, 80, 82, 85, 86.

[149] *See id.* art. 75(3).

[150] *See id.* art. 79.

[151] *See id.* art. 79(2).

[152] *Id.* art. 80.

[153] Moreover, the court should give immunity to the debtor by the official authority of the court or by the request of the debtor when the debtor completes the repayment plan. *See id.* arts. 83-86. However, the court can give immunity to the debtor, even though such debtor failed to complete the repayment, when 1) the debtor was unable to complete the repayment for reasons which the debtor could not control; 2) the entire amount of the individual rescue credit estimated (up to the court approval date) is not less than the amount of debt that the debtor has to pay when the debtor declares bankruptcy; or 3) the amendment of the repayment plan is "impossible." *Id.* However, the court cannot grant immunity to the debtor when 1) material individual rescue credits were omitted from the credit list in bad faith by the debtor-applicant, or 2) the debtor-applicant failed to observe the responsibilities and duties under IDRA Article 83 (i.e., to repay owed debt obligations per the agreed IDRA repayment schedule). *See id.* art. 83.

Further, in terms of penalties pursuant to IDRA Articles 87, 88, and 90, the local court has the ability to impose penalties when 1) the debtor attempted to conceal the debtor's property or decrease the burden of repayment for the purpose of harming related creditors (i.e., acts of fraud or willful misrepresentation); 2) the rescue committee or the supervisory committee engages in acts of bribery; or 3) the debtor's property investigation takes place for purposes other than those expressly mandated pursuant to IDRA (i.e., the debtor's property is investigated in bad faith outside the purview of IDRA). *See id.* arts. 87-90.

[154] This refers to the Bank of Thailand's statutory power as the sole regulator of credit card issuers in Thailand. *See* 2004 BOT Regulation, *supra* note 17, § 2.

[155] *See* Press Release, Ministry of Finance, No. 89/2548 § 1.1 (Oct. 18, 2005).

Despite its inapplicability to credit card borrowers, the authors believe that it is important to discuss the PDRM briefly as well as compare it with the IDRA because, as mentioned earlier, the PDRM could be viewed narrowly as a bailout law.[156] With the narrow focus of our study on credit card debts, and particularly in light of the contrasting trend in delinquency rates between the two countries, we choose to explore first, and in more detail, the 2004 BOT Regulation.[157]

1. The 2004 Bank of Thailand Regulation: The Bank of Thailand's Preemptive Strike

The 2004 BOT Regulation is the latest, and strongest, in a series of efforts from the BOT to regulate the commercial banks and non-bank credit card companies operating in Thailand.[158] After witnessing the sharp rise in total credit card outstanding balances in 2002, the BOT set a deliberate goal to preempt any further rapid buildup in credit card debts.[159] This goal is explicitly stated in the 2004 BOT Regulation, which aims to "set up a precaution and prevent problems that may arise from credit cards in the future."[160]

The 2004 BOT Regulation is organized in five parts, which are designed to regulate the following areas: 1) the definition of credit card and qualifications of the cardholder; 2) the minimum monthly payment requirement and conditions for mandatory cancellation of the account; 3) the change of credit card debt category to other categories of debt; 4) the use of information of cardholders, both for credit line underwriting purposes and for the general purpose of keeping information confidential; and 5) the

[156] The scope of applicability to individual debtors of the PDRM is similar to that of the IDRA. *See id.* § 1.3.

[157] Regarding the contrasting delinquency rates, see *supra* note 97. *See* 2004 BOT Regulation, *supra* note 17.

[158] For a brief summary of regulatory developments that compares key requirements of the previous Bank of Thailand credit card regulations with those of the 2004 Cardholder Requirements, see Thitima Chucherd, *The Effect of Household Debt on Consumption in Thailand*, Bank of Thailand Discussion Paper, Apr. 2006, at 10.

[159] *See* Dr. Tarisa Watanagase, Deputy Governor, Bank of Thailand, Presentation Given at the Cards & Payments: Asia Pacific 2005 Conference & Expo in Bangkok, Thailand: The Future of Card and Payments: A Regulator's Perspective (Sept. 20-21, 2005), *available at* http://www.bot.or.th/bothomepage/General/PressReleasesAndSpeeches/Speeches/english_version/speech_Governor&deputyGovE.htm [hereinafter Dr. Watanagase's Presentation].

[160] *See* 2004 BOT Regulation, *supra* note 17, § 1. Quotation provided is from the unofficial translation prepared by Baker & McKenzie courtesy of The Foreign Banks' Association in Thailand, *available at* http://www.bot.or.th/bothomepage/notification/fsupv/EFipcs.asp.

establishment of an internal risk management structure.[161] We will explore certain aspects in some of these areas to the extent of their relevance in achieving what the BOT sets out to achieve when faced with the challenge of rapid increases in credit card debts, which is to preempt the influx of cardholders that could cause future bad loan problems.

The most relevant areas of the regulations for our analysis are the first two parts and a portion of part four in the above paragraph, which places a ceiling on the credit line for each cardholder.[162] These regulatory areas directly respond to the goal the 2004 BOT Regulation set out to achieve: keeping the gate open only to credit-worthy borrowers and screening out likely defaulters.[163]

The first part of the 2004 BOT Regulation restricts potential defaulters by setting clear financial criteria. Primary account holders must 1) have an income not less than THB 15,000 per month or THB 180,000 per annum; 2) have a deposit at the card-issuing bank for the full amount of the approved credit line;[164] or 3) if self-employed, have a deposit account with at least six months of documented, satisfactory cash flow at a qualified financial institution.[165] These rules are designed to prevent a repeat of the 2002 credit card spike.

The second part of the 2004 BOT Regulation imposes greater financial discipline upon both cardholders and card issuers. The pertinent parts provide that 1) successful applicants who are cardholders from April 1, 2004 (the "new cardholders") must pay no less than ten percent of their total outstanding balance as a minimum for each installment; 2) existing cardholders prior to April 1, 2004 must pay no less than five percent of their total outstanding balance as a minimum for each installment;[166] and 3) if a cardholder defaults on payment for more than three months from the due date, the card issuer shall immediately cancel the card.[167]

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[161] *See* Bank of Thailand, Official Letters from the Bank of Thailand to all commercial banks and non-bank credit card operators, Re: Dispatch of the Notification of the Bank of Thailand Re: Rules, Procedures and Conditions to Undertake Credit Card Business of Credit Card Business Operators (Mar. 15, 2005).

[162] *See* 2004 BOT Regulation, *supra* note 17, §§ 4.2, 4.3, 4.7.

[163] *See id.* § 1.

[164] This criterion is not applied to non-bank card issuers. *See* Bank of Thailand, Notification of the Bank of Thailand Re: Rules, Procedures and Conditions to Undertake Credit Card Business of Credit Card Business Operators § 4.3 (Mar. 4, 2005).

[165] *See* 2004 BOT Regulation, *supra* note 17, § 4.3.

[166] However, from April 1, 2007, they will be subject to the same 10% requirement as the new cardholders. *See* 2004 BOT Regulation, *supra* note 17, § 4.5(1)(b).

[167] *See id.* § 4.5.

The last relevant area of the 2004 BOT Regulation[168] is found in Section 4.7(2). This section imposes a ceiling for a credit line granted to a cardholder at five times the individual's monthly average income, [169] or cash flow movement in the deposit accounts of qualified financial institutions of such cardholder ("Ceiling Rule").[170]

Again, using the objective of preemption as our yardstick, one of the first questions is whether the Ceiling Rule is sufficiently successful in getting the credit card issuers to create a better cardholder screening system for granting credit lines.[171] Generally, the Ceiling Rule is deemed more prudent as a policy because it introduces a better regulatory environment than leaving the credit limit in the hands of card issuers to prescribe according to their different credit review practice, which was exactly the environment that existed prior to the 2004 BOT Regulation.[172] In gauging whether the Ceiling Rule is successful beyond its general or theoretical application, some issues outside the scope of this Article may be worth addressing further. These issues should include further examination of the following: 1) how customer credit information is shared among card issuers, and 2) how often the BOT requires the issuers to review such information because the Ceiling Rule relies on the card issuers' sufficiently current knowledge of the status of average income or cash flow in deposit accounts

[168] A couple of interesting issues are worth examining but are beyond the scope of this Article. For instance, if the primary objective of the 2004 BOT Regulation is to preempt credit card problems in the future, does the different treatment accorded to existing and new cardholders help all holders to improve their payment behavior? A further inquiry into the rule may be: what happens if cancelled cardholders attempt to reenter the system by applying for new credit cards? While we do not think the current data is extensive enough to support the assessment required for answering the first question, there is no express provision in the 2004 BOT Regulation that will prevent an ex-defaulter applicant from reentering the system, if such applicant meets one of the conditions to enter the floodgate that we discussed earlier. Nevertheless, the sharing of credit information by the establishment of credit bureaus in Thailand, such as the Thai Credit Bureau, may render such practice less possible in actuality than from strictly interpreting the 2004 BOT Regulation.

[169] As with the second area of relevant 2004 BOT Regulations sections previously discussed, the Ceiling Rule allows different treatments for existing cardholders, for whom the rule shall have become applicable in January 2005, as opposed to the new cardholders, who were subject to the rule in April 2004. One may also note that what separates the Ceiling Rule from the other two areas of the 2004 BOT Regulation that we have already discussed is that it is directed at the credit card issuers exclusively, as opposed to other regulated areas that may have an impact on the cardholders as well as credit card issuers. *See* 2004 BOT Regulation, *supra* note 17, § 4.7(2).

[170] *See id.*

[171] While there is little doubt to that having a ceiling is better than having no ceiling at all, it follows that a system that imposes a spending credit limit is inherently better in dealing with overspending than a system that lacks such a limit.

[172] *See* Thitima Chucherd, *The Effect of Household Debt on Consumption in Thailand*, Bank of Thailand Discussion Paper, Apr. 2006, at 10.

of cardholders.[173] On the second point, it should be noted that the BOT does not ignore the issue of information monitoring. On the contrary, certain sections of the 2004 BOT Regulation require card issuers to establish an internal risk management system to evaluate and monitor their credit card accounts.[174]

2. Personal Debt Restructuring Method: The Thai Ministry of Finance's Bailout Effort

On October 18, 2005, amid the similar environment of rising household debt that triggered the BOT to introduce the 2004 BOT Regulation, the MOF announced the PDRM, its measure to restructure the massive THB twenty-seven billion in consumer loan NPLs. The Thai Prime Minister at the time, Mr. Thaksin Shinawatra, described the PDRM as a state tool to extend its helping hand to the last group in society to be helped.[175] Essentially, the PDRM is a debt restructuring program that cuts the principal amount in half and forgives all interest on personal debt owed by about 100,000 qualified individual NPL borrowers, provided that such borrowers repay the rest of the principal within a defined period.[176] Because it is a much simpler debt relief effort than South Korea's IDRA, we will first describe its scope of applicability and a summary of its rules and procedural steps, and then we will explore several aspects of it in comparison to the IDRA. Finally, we will conclude with a description of general reactions to the PDRM and some interesting anecdotes of moral hazard in the credit card market that seem to be inspired by the PDRM.

First, unlike South Korea's IDRA or Thailand's 2004 BOT Regulation, the PDRM is not a law or regulation in the conventional sense. Our understanding of what constitutes a law may include a set of rules, introduced by way of legislative process or prescribed by a regulator such as the BOT, that sets out to regulate certain actions with binding effect, and will be enforced with penalties by an empowered administrative agency. The PDRM, on the other hand, is a law in the sense that it is a request for cooperation from an administrative agency (in this case the MOF) to its regulated members (in this case a number of local banks, finance companies, and asset management companies). Its function is to commonly develop a

[173] Although such further examination is beyond the scope of this Article, it may nevertheless provide a more comprehensive evaluation of the Ceiling Rule in a broader context, such as how influential its role is as one of the many parts that constitute Thailand's consumer credit policy.

[174] *See* 2004 BOT Regulation, *supra* note 17, §§ 4.9(3), 4.10 (for banks), 4.9 (for non-bank issuers).

[175] *See* Chudasri & Chantanusornsiri, *supra* note 22.

[176] *Id. See also* Chantanusornsiri, *supra* note 22.

consensus to adopt a measure, and once such consensus is reached the members will be bound by the rules of the adopted measure.[177]

This is notable because of several distinctions with the 2004 BOT Regulation or the IDRA: 1) initial participation by the regulated members is voluntary; 2) the members participate actively with the regulator in arriving at the measure; and 3) the measure itself is not binding upon regulated members who do not choose to participate.[178] Therefore, this makes the PDRM much more limited in several aspects when compared to the IDRA or other notifications issued by the MOF that have a binding effect on all members.[179]

The PDRM qualification requirements for the loans are 1) each loan must be classified as a NPL as of June 30, 2005,[180] and must not be an agricultural loan, housing loan, or credit card loan; 2) the loan must be originated by a participating financial institution; 3) the borrower must be a natural person; and 4) the borrower must be sued by the relevant creditor in court before July 1, 2005, and the outstanding principal balance of the loan of such borrower must not exceed THB 200,000 per financial institution.[181]

Two options are open to individuals seeking to take advantage of the PDRM. The debtor may pay half the outstanding balance by June 30, 2006, or the borrower may seek to refinance the same amount through the state-owned Government Savings Bank ("GSB"). If the GSB agrees to refinance

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[177] The PDRM expressly states in its introductory paragraph that it is a product of cooperation between the Ministry of Finance ("MOF") and the participating financial institutions, whose names appear in the schedule to the PDRM. *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005).

[178] In this instance, other financial institutions that are otherwise regulated by the MOF, but which chose not to participate in the PDRM, will not be bound by its rules.

[179] The PDRM rules are brief (the notification is three pages in its entirety) and are organized into two parts. The first part specifies the qualifications of loans that may enter the measure and the second part prescribes procedural steps that debtors possessing qualified loans must follow should they want to restructure such loans. However, it is the limited application to some members of an MOF-regulated class that distinguishes the PDRM from other MOF notifications that require all members of such class to be in compliance, such as the MOF Notification Re: Rules, Procedures, and Conditions for Establishing a Commercial Bank, or the MOF Notification Re: Permission to Foreign Governments and Financial Institutions of Foreign Governments to Issue Baht Bonds or Debentures in Thailand. *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005).

[180] Technically, from the Thai regulatory point of view, NPLs are defaulted loans that the Bank of Thailand has classified as such by dividing them into different hierarchical categories depending on various factors, such as the length of time that has passed since their due dates, that should alert the lenders of their being potentially difficult to collect in order for the lenders to set aside reserved provision at the level as required by the Bank of Thailand. The categories of loans classified as NPLs are 1) Loss, 2) Doubtful of Loss, 3) Doubtful, and 4) Substandard. *See* Bank of Thailand, Notification of the Bank of Thailand Re: Worthless or Irrecoverable Assets and Doubtful Assets that may be Worthless or Irrecoverable of Commercial Banks, §§ 4.3, 4.4, 4.5, 4.6 (Aug. 23, 2004); Bank of Thailand, Notification of the Bank of Thailand Re: Worthless or Irrecoverable Assets and Doubtful Assets that may be Worthless or Irrecoverable of Credit Finance Companies and Finance Companies, §§ 4.3, 4.4, 4.5, 4.6 (Aug. 23, 2004).

[181] *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005), § 1.

half of the outstanding principal balance, then the debtor has until June 30, 2009 to repay the GSB. Successful repayment closes both the GSB loan and all debt owed to the original lender for that account.[182]

Reactions to the PDRM were initially negative. Once announced, it was instantly met with skepticism from virtually all the major local banks, which voiced concern that such a policy would create a moral hazard among borrowers.[183] Another reason that may prompt banks to voice their concerns over the PDRM is that the measure will force banks to mark their loans to market value out of their own pockets. In fact, the MOF has declared that the measure "will not require subsidy from the national budget because the PDRM is based on the principle of cooperation among commercial banks."[184]

As described earlier, the central thrust for the government in putting forth the PDRM is its conviction that since the 1997-98 Crisis, certain personal borrowers are victims of interest charges. While this is a worthy and altruistic conviction, the impression that Thai borrowers may have been charged interest unfairly is not a point lost from the perspective of Thai borrowers. On November 27, 2005 (approximately one month following the PDRM), the Foundation for Consumers, an influential Thai non-governmental consumer organization group, advised a group of borrowers to default on their loans with the lender, a local micro-credit lending company named Easy Buy.[185]

C. Individual Debtor Rehabilitation Act vs. Personal Debt Restructuring Measure: Comparing the South Korean and Thai Bailout Laws

There are so many aspects of the Thai PDRM that differ from the South Korean IDRA that the only significant similarity may be that both are intended to bail out the borrowers.[186] In order to better understand their

[182] If the borrower chooses the first option but defaults on the specified payment, the restructure is terminated and the loan amount will be calculated as if the restructure has not been made. *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005), § 2.1.3.

[183] *See* Chantanusornsiri & Chudasri, *supra* note 25.

[184] This means that the banks would, on the one hand, accept the write-off for qualified borrowers while, on the other hand, continuing the negotiation with (and explaining the different treatment to) other borrowers who have been duly paying their loans, interest charges and all. *See* Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005), at 3.

[185] The strategy outlined by the Foundation for Consumers is for the borrowers to defend their case in court on grounds that include illegally high interest rate charges. *See NGO to Challenge High Interest Rates in Court*, BANGKOK POST, Dec. 5, 2005; Preeyanat Phanayanggoor, *20 More Easy Buy Complaints to Police*, BANGKOK POST, Nov. 28, 2005.

[186] The only analogy the authors can come up with to casually compare the PDRM to the IDRA is that the PDRM is a physically smaller, more distant relative to the IDRA. The IDRA is much bigger and more resourceful with influence to help more of the targeted class of people.

differences, important characteristics of each system will be compared here. First, the purpose and means to arrive at the rules to help debtors are different. While the IDRA is directed at customers who overspent in the wake of the Korean government's 1999 initiatives, the PDRM aims to help individuals who suffered from substantial interest accruing on their debts as a direct result of the 1997-98 Crisis.[187] Furthermore, the IDRA is a legislative act while the PDRM relies on consensus building between the MOF and its regulated members.

The second major difference between the two bailout measures is obvious and related to their different purposes that we discussed above. The scope of applicability of the IDRA is much wider than that of the PDRM. This includes different qualifications for eligible debt as well as differences in types of debt. For instance, the covered amount in the two measures differs substantially.[188] In addition, the IDRA is primarily aimed at debt obligations owed to private individuals, whereas the PDRM covers only certain types of debts owed to participating financial institutions.[189]

The third and final major difference that this Article will highlight is the procedural nature of both measures. Where the South Korean IDRA has an elaborate committee reviewing applications from debtors and requires the local court's judgment with respect to the IDRA's applicability to certain qualified applicants, Thailand's PDRM procedure is a less formal, out-of-court restructuring that resembles private workouts rather than the bankruptcy procedure-like process of the IDRA.[190] For instance, the repayment time frame for the IDRA restructuring could go on for eight years while the PDRM provides a three year deadline for repayment.[191]

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[187] Outside the text of the PDRM, a telling statement with respect to the purpose of PDRM may also be found in the comment by the Finance Minister Dr. Thanong Bidaya: "Eight years of inaction and no solutions have resulted in a huge interest burden of 300% higher than the loan principal combined." Chantanusornsiri, *supra* note 22.

[188] Compare the whopping USD 500,000 per account coverage of the IDRA for unsecured debts to the maximum of USD 5000 per account coverage of the PDRM for qualified debts. Even adjusted to the 300% increase in accrued interest the amount still pales in comparison to that offered under the IDRA. *See id.*

[189] Even in this instance, the PDRM further narrows its application to exclude specific types of debts that may otherwise have qualified, such as agricultural loans, mortgage loans, and credit card loans.

[190] It is important to note another procedural difference between the IDRA and the PDRM because it also relates to their different purposes and the scopes of applicability. Unlike the PDRM which is intended to be a one-time restructuring opportunity and therefore provides deadlines for eligible borrowers to contact participating lenders, the IDRA does not typically impose a specific deadline for this purpose. The main implication from this procedural aspect is that qualified individual debtors cannot benefit from the PDRM if they do not apply for it by the prescribed deadlines.

[191] This refers to Section 2.2.5 of the PDRM that sets the repayment maturity date for debtors to repay the Government Saving Bank to be no later than June 30, 2009. Press Release, Ministry of Finance, No. 89/2548 (Oct. 18, 2005), § 2.2.5.

In the next section, we will analyze the impact of bailing out in general, and specifically as it is applicable to the IDRA. We will also occasionally provide comparative information regarding the differences between the Korean and Thai bailing out laws as well as the differences between the preemptive and bailout methods that the two governments have implemented.

V. THE EFFECTS OF CONSUMER BAILOUT INTERVENTION VS. PREEMPTIVE INTERVENTION

Given the notable scope and mandate of related debt relief programs in both Thailand and South Korea addressed in this Article, this section analyzes the potential winners and losers of such bailout laws. It then assesses each country's legal and policy frameworks by comparing the bailout approach taken by the IDRA and the PDRM with the preemption approach taken by the 2004 BOT Regulation. We conclude that the preemption method may be a better regulatory approach in coping with credit card related NPLs because it more effectively manages relevant delinquency rates, does not pass NPL costs to the taxpayers, and is more in line with the desired role of a government that pursues a policy of minimal market intervention, thus averting the related downsides of moral hazard.

A. The Winners and Losers from the Bailout Approach

For South Korea, in our view, the notable potential winners are 1) qualified individual debtors who are effectively being "bailed out" of debt pursuant to the IDRA;[192] 2) foreign financial institutions that may be eager

[192] In practice, the number of debtors seeking credit card bailouts has increased since the IDRA's introduction in September 2004, with the total number of applicants for IDRA or IDRA-type debt rescue programs at approximately 38,828, with the government reviewing an average of 4000 applications every month for such programs. *See* Ji-young Kwan & Chung-un Cho, *Over 20,000 Debtors Rescued in First Year of Court Bailout*, KOREA HERALD, Sept. 23, 2005, *available at* http://www.koreaherald.co.kr/SITE/data/html_dir/2005/09/23/200509230033.asp. Most IDRA applicants are between ages 40 and 49 (31.7%), with 60.2% of debtors being men and 39.8% women. *Id*. The cumulative average debt range is from 50 million to 100 million won, with "business failure" being given as the main reason for such individual bankruptcy cases. *Id.* Most directly relating to this Article, credit card bills represented the largest proportion of individual debt within such programs, representing about 59.8% of total individual average debt under such programs. *Id.*

At first blush, these numbers may appear to give IDRA some credibility in terms of resolving South Korea's credit card bankruptcy binge spending hangover. However, the IDRA and its related programs failed to meet expectations for several reasons. First, before the IDRA, the Korean Supreme Court expected more than 10,000 defaulters per month to register, but less than half that number of applications were received by the court in 2004 (the first year of the IDRA's implementation). Second, the numbers clearly demonstrate that debtors in default prefer to pursue private debt counseling programs, such as the Credit Counseling & Recovery Service ("CCRS") which has received up to 20,000 applications, rather than to purchase KRW-denominated NPLs for future upside (which Table 3 below addresses); 3) Korean institutions which will be able to receive injected public funds into their balance sheets vis-à-vis the IDRA; and 4) from a political perspective, the ruling political parties such as the South Korean Uri political party that helped to push the IDRA into passage on September 23, 2004. The potential losers may be the Korean taxpayers, who are effectively paying for the bailout of individual credit card debtors under the IDRA, and perhaps also the reputation of the Korean financial infrastructure due to the "moral hazard" concern discussed herein.[193]

This analysis applies to Thailand's PDRM and the parties involved in the Thai bailout measure as well, with two notable exceptions. First, foreign buyers of Thai consumer NPLs may not particularly benefit from the PDRM because the payoff under qualified loans will be substantially decreased as a result of the PDRM 50% write-off. Plus, such buyers who bought the loans prior to the announcement of the PDRM may already have in place private workout agreements with the borrowers of NPLs in their portfolio, which could have provided an even further discount of principal as compared to the 50% offered by the PDRM.[194] Second, unlike the IDRA, the PDRM does not use the state budget to fund the balance sheets of the financial

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the public court system linked to the IDRA program. *Id*. CCRS is much less costly (requiring a fee of KRW 50,000, or about USD 48) compared to IDRA's complex court-guided paperwork structure, which typically requires legal assistance amounting to an extra KRW 1-2 million (USD 1000-2000). Third, the IDRA process is both cumbersome and slow, often taking several months for the court to accept or reject an individual debtor's rescue plan.

Moreover, if an individual consumer had overdue debts of KRW 300,000 for three months, such a person would be classified as a "credit delinquent" and would thereafter be placed on the creditor "black list" of the financial institutions. When an individual is deemed a "credit delinquent," the information would be kept by relevant financial institutions for a year. As the IDRA effectively "rescues" (or bails out) a debtor from debt, the IDRA applicant may effectively be rescued and thus avoid the notorious title of "credit delinquent," and delay or lower the likelihood of being placed on the "black list" used by Korean financial institutions. *See* Kim Dong-ho, Park Sung-ha, *Credit Black List Goes; New System Come In*, JOONGANG DAILY, Apr. 24, 2005, *available at* http://joongangdaily.joins.com/200504/24/200504242241080279900090509052.html.

[193] The issue of "moral hazard" can be evidenced in theory and practice in the South Korean case. For example, from late 2004, following the IDRA's passage and various government official statements relating to individual debt assistance programs, debtor payments have dropped. For example, the Credit Recovery Committee reported that as of mid-December 2004, the number of debt adjustment applicants exceeded 1000 per day. However, following Finance Minister Lee Hun-Jai's January 7, 2005 statement that the ministry may exempt certain principal debts owed, the debt restructuring plan's applicant levels dropped to 400 the next day. Further, an average of 4000 consulting cases existed in November 2004 (following IDRA's September 2004 passage). This number dropped to 476 on January 8 (the day following Finance Minister Lee's comments). Taken from a big picture purview, this signals that debtors are waiting longer to repay debt obligations hoping that "they will receive some sort of benefit" for possibly making payments at some point in the future rather than now. *See* Wohn Dong-hee, *Debtors Abandon Payments*, JOONGANG DAILY NEWSPAPER, Jan. 17, 2005, at 3.

[194] This is because Thai NPLs were purchased already at values deemed heavily discounted from the FRA sales.

institutions in order to subsidize its measure.[195] Nevertheless, we find the moral hazard issue to be a critical concern shared by both countries.

Table 3. NPL Levels in Korea from 1998 to 2001.[196]

	1998	*1999*	*2000*	*2001*
Total NPLs (trillion KRW)	118	88	64.6	39.1

B. Bailout vs. Preemption: A Case for Limited Market Intervention?

A balancing of considerations can be used to determine what makes such bailout laws beneficial or detrimental, with reference to the relevant arguments for and against bailing out individual credit card debtors pursuant to the IDRA. As the PDRM does not bail out credit card debtors, we will only refer to that measure occasionally in the limited context of discussing the pros and cons of bailout laws in general. Where appropriate, we will also include discussions of some aspects of the 2004 BOT Regulation as a representative method of preemption that could be employed as a policy option, as compared to the bailout policy represented by the IDRA.

In South Korea, the IDRA was originally passed by the National Assembly based on the assumption that the benefits of action outweighed the costs of inaction in relation to the Korean credit card crisis. Korean legislators, in other words, feared that action could potentially be more detrimental than inaction, from both an economic and social perspective.[197]

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[195] Therefore, from a theoretical purview, the public funds do not suffer and the Thai taxpayers are in better shape than their Korean counterparts. It is worthwhile to note, however, that the institution specified in the PDRM to provide refinance loans is a state-owned bank, the Government Saving Bank. However, considering the gravity of taxpayer burden, the amounts restructured under the PDRM are still much smaller than those under the IDRA.

[196] *See* Korea Asset Management Corporation, http://www.kamco.or.kr/data/report/img/200411report07_06.pdf (last visited Nov. 30, 2007).

[197] The negative social (separate from economic) ramifications included increased reported cases of suicide, insurance fraud, and prostitution, among others. In addition, what may have been a primary driver behind such debt relief actions was the fear that not doing anything could result in a financial crisis, similar to the 1997-98 Crisis. To work backwards, there is an argument that a possible financial crisis could be based on the sheer size and scope of individual credit card debt that existed in Korea, especially after 2002. Such credit card debt is effectively a loan with high interest rates (usually ranging from twenty to twenty-five percent) that should be repaid to the lending institution, usually a domestic credit card company or financial institution. Thus if such debt is not repaid, this leads to a net loss equal to the expected original loan amount (principal) plus interest (expected profit from issuing the line of credit).

If only the principal is repaid, then this in theory should amount to a neutral transaction, whereby neither upside nor downside is realized. However, if both principal (in part or full) and interest are not fully repaid, then a net loss exists within the balance sheet of the lending institution. For example, if lending institution *A* (lendor) lends USD 100 equivalent to lendee *B* with a twenty percent interest rate

The aggregate effect of the amount of individual credit card defaulters could place an extreme amount of stress upon the nation's financial infrastructure.[198] Thus, if such lending institutions begin to fail—as in the case of LG Card,[199] formerly Korea's largest credit card company—then this could lead to a crisis of confidence in the financial sector. Because lending institutions are critical to the viability of the Korean economy, which is largely driven by the growth of large conglomerates known as *chaebol*,[200] the fall of one lending institution may potentially lead to a chain reaction.[201] This scenario could then ultimately lead to a 1929-type run on banks and a massive diminishment of credit onshore. Such an event would stifle the Korean economy and potentially plunge the eleventh largest global economy back into another crisis reminiscent of the 1997-98 Crisis.[202]

In Thailand, as discussed in our analysis in the previous section, a major objective of the 2004 BOT Regulation was to cope with the rapid growth of individual credit card debt in 2002 by creating a precautionary and

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charge, then lendor expects USD 100 (principal only) to USD 120 (principal plus interest) on its asset side of the balance sheet. Anything less will result in lost expected revenue, which hurts the financial viability of lending institution *A*.

[198] "The high risk of family credit default means that the nation's economy is still ailing amid ever-decreasing corporate investment, rising unemployment, intensifying labor disputes and rampant real estate speculation." *See Seriousness of Family Debts–Top Bureaucrats Appear Too Optimistic*, KOREA TIMES, Nov. 7, 2003. Also, the IMF argued that South Korea's economic rebound has been hampered by a host of problems, including huge debts incurred by credit card firms, and also pointed out a downside risk for the Korean economy as consumption could be weighed down by heavy household debt. Moreover, the IMF warned of the risk of moral hazard relating to credit delinquencies due to the credit card crisis. *See* Cho Hyoung-kwon, *IMF Warns of Moral Hazard of Credit Delinquents*, KOREA TIMES, May 30, 2004, *available at* http://search.hankooki.com/times/times_view.php?term=imf++&path=hankooki3/times/lpage/biz/200405/kt2004053015303611870.htm&media=kt.

[199] In April 2004, Samsung Electronics spent nearly KRW 600 billion to bail out its affiliate, Samsung Card Co., Korea's largest credit card issuer. Thereafter, Samsung Card Co. stated in January 2005 that it would raise KRW 1.2 trillion (USD 1.2 billion) by selling shares to its group affiliate, Samsung Electronics. Altogether, these actions by Samsung Electronics represented two notable bailouts in one year. The funding structure was devised such that Samsung Card Co. sold 240 million new shares at KRW 5,000 per share in March 2005. Individuals and Samsung Card employees own a combined 11.7% stake in Samsung Card Co. *See $1.2 Billion Bailout for Card Firm*, JOONGANG DAILY, Jan. 29, 2005, at 3.

[200] The four major credit card companies in Korea are Samsung Card Co., LG Card Co., Shinhan Card Co., and BC Card Co. Among these four, the first two credit card companies–Samsung and LG–are the two largest conglomerates in the Korean economy. *See LG Card's Liquidity Crisis*, KOREA TIMES, Nov. 23, 2003.

[201] From this perspective, South Korea's legislative attempt represented a reactionary attempt to send a message to the markets that, first, the government recognized this potential risk, and second, that the language embedded in the IDRA, which would mitigate such potential events from occurring, would in turn restore confidence back to the onshore markets.

[202] *See generally* Borensztein & Lee, *supra* note 76, at 5-9 (discussing the monetary causes of the South Korean "credit crunch"). For a slightly more theoretical view on credit rationing effects, see Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 AM. ECON. REV. 393 (1981).

preventive set of rules.[203] The approach taken by the BOT, therefore, is different from the approach taken by the IDRA in many respects. First, unlike that of South Korea, the Thai credit card market had not reached the level of crisis at the time the BOT launched the 2004 BOT Regulation. Thus, the 2004 BOT Regulation was launched in the spirit of anticipating a potential crisis rather than as a reactionary stance to rescue institutional lenders, as in the IDRA's case.[204] Second, the 2004 BOT Regulation is procedurally very different from the IDRA because it is not a debt relief measure and therefore does not apply directly to borrowers, but instead is applicable to the card issuers.[205] In addition, and perhaps most importantly, the 2004 BOT Regulation is distinguishable from South Korea's IDRA in that it has not introduced the issue of moral hazard to the credit market. This is because the 2004 BOT Regulation does not attempt to restructure the debts by placing an additional factor in the debtor-creditor relationship, which in the IDRA's case is the local court.[206]

Assuming that the IDRA and 2004 BOT Regulation, reduced to their most simplistic forms, both represent "market intervention" efforts by the South Korean and Thai governments, then the previous paragraph may have extolled the purposes and merits of why a government may need to interfere with the market mechanism in the credit card industry. Government intervention opponents have several counterarguments. The first argument is that bailing out individual credit card holders creates moral hazard, which effectively creates an incentive for individuals to spend recklessly again in the future, with little or no fear of the consequences related to debtor default simply because such debtors will expect to be bailed out again by the government at the taxpayers' expense.[207] This was also the major concern of Thai commercial banks when the PDRM was announced.[208]

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[203] *See* 2004 BOT Regulation, *supra* note 17, § 1. *See also* Dr. Watanagase's Presentation, *supra* note 159, at 5.

[204] *See* 2004 BOT Regulation, *supra* note 17, § 1. The BOT's efforts were in reaction to the outstanding balance buildup rather than to a crisis triggered by concerns over the well-being of lenders.

[205] *See id.* § 3 (Scope of Application).

[206] Although § 4.6 of the 2004 BOT Regulation prescribes rules for banks to follow when banks need to change the category of debts, the 2004 BOT Regulation does not create a different process of repayment for credit card borrowers as separated from other types of borrowers. In other words, it is less likely to be compared with a bankruptcy law than the IDRA.

[207] As a matter of practice separate from theory, government action to relieve the debts of individuals caused credit delinquents to make less of an effort to pay what they owed. After the government announced on January 7, 2005 that the Ministry of Finance and Economy would look into exempting the principal debts, debts adjustment consulting requests to the Credit Recovery Committee fell from average 4000 a day in November 2004 to 476 on January 8, 2005. *See* Wohn, *supra* note 193, at 3.

[208] A representative quote showing the banks' concern comes from Khunying Jada Wattanasiritham, then president and CEO of Siam Commercial Bank and also the Chairman of the Thai Bankers' Association. Ms. Wattanasiritham stated "[t]he message sent by the government is unclear and some may

The second argument is that such legislation may send a dangerous signal to the markets that the government sees within its purview the notion of acting as constant market surveyor.[209] In other words, the fear is that the government has become an overly intrusive market regulator that stifles rather than spurs free market behavior, transparency, and investment. Investors should be free to enter into every transaction on the basis of *caveat emptor*.[210] In such an overly regulated market environment, related risks exist as well.[211] These risks include inaccuracies of information, lags in receiving information,[212] and lack of needed information in relation to setting forth such legislation.

Further, related to the traditional Keynesian economic perspective is the notion that the role of government should be as active protector of national financial interests.[213] More specifically, the government can and should play a very hands-on management role over the public's consumption patterns to help mitigate actual, threatened, or real market failures, and instill public confidence that a watchful force exists to protect consumers against financial turbulence or crisis.[214] One argument for a legislatively interventionist approach is that most, if not nearly all, of the credit card users

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think that if they have debts, they should not repay them as they can seek government help later. If people think like this, it's a danger for the whole banking system." Chantanusornsiri & Chudasri, *supra* note 25. Considering Ms. Wattanasiritham's distinguished professional career, which started at the BOT, there is little room for doubt that this is her candid reaction.

[209] The main problem in this scenario is that such instant price deflation towards a certain designated level would be chosen not by the markets, as in most developed nations, but by government bureaucrats.

[210] "Let the buyer beware."

[211] If the government sends out signals that it is in the business of acting as a market commentator, then the country's public policy is to create a nation overly dependent on the government as it relates to individual investment decisions.

[212] One of the well-known examples on incomplete information is "the parable of separate islands." This concept was first introduced by Edmund Phelps. *See generally,* EDMUND S. PHELPS ET AL., THE MICROECONOMIC FOUNDATIONS OF EMPLOYMENT AND INFLATION THEORY (W.W. Norton 1970). Robert Lucas used this parable to explain the concept of incomplete information. In his explanation, Lucas imagined an economy with one single business unit based on a separate island, with no knowledge of what happens on other islands. Lacking information, investors based on the separate island can make incorrect investment decisions. Therefore, incomplete information may increase risk much more than expected. *See generally* MARTIN NEIL BAILY & PHILIP FRIEDMAN, MACROECONOMICS, FINANCIAL MARKETS, AND THE INTERNATIONAL SECTOR 468 (2d ed. 1995).

[213] Regarding Keynesian economic theory, "[t]he fundamental lesson of Keynesian economics is that the automatic adjustment mechanism of competition cannot be relied upon to achieve such policy objectives as full employment and price stability. The main message of Keynesian economists is that the automatic adjustment process of the market is too unreliable to serve as a practical basis of full-employment policy." MARK BLAUG, ECONOMIC THEORY IN RETROSPECT 671 (5th ed. 1997-98).

[214] However, after the 1997 Korean economic crisis, some academics blamed the government-led economic development as the main reason for the economic crisis, and claimed that market-oriented economic development would be necessary to overcome the economic crisis and to develop the Korean economy further. *See* Uk Heo & Sunwoong Kim, *Financial Crisis in South Korea: Failure of Government-Led Development Paradigm*, 40 ASIAN SURV. 492 (2000).

relating to the Korean credit card crisis are domestic, and that such Korean domestic investors have a relatively shorter history of personal credit card expenditure.[215] For the Thai credit card market, one of the illustrative events relating to this issue is the historical seventy-six percent year-on-year increase in total credit card debt in 2002 as a result of the relaxation of the minimum income requirement. Another example that supports the notion of government as an active protector for Thailand is that the rate of year-on-year growth of total credit card debt has been decreasing since the BOT reinstated the original minimum income requirement and, for the first time, assumed its role as the regulator of the non-bank credit card companies in November 2002.

Balancing both sides of the argument,[216] limited and narrowly tailored government action may prove the best equilibrium policy solution as it relates to South Korea's and Thailand's credit card issue. The markets are interfered with less by both governments taking a narrowly focused view, and the governments will also be in a better position to instill investor confidence.[217]

This limited intervention approach seems to be reflected more in the preemptive method of the 2004 BOT Regulation than the bailout laws seen in the IDRA or the PDRM. This is because the BOT anticipated the risk of foreseeable financial problems (i.e., excessive buildup of credit card debts) by launching the 2004 BOT Regulation to preempt such problems and improve the credit screening system. The 2004 BOT Regulation also has the advantage of being a low-profile protective regulation, as opposed to a high-

[215] Personal investors are also referred to as "retail investors." *See* FRANK J. FABOZZI & FRANCO MODIGLIANI, CAPITAL MARKETS: INSTITUTIONS AND INSTRUMENTS 14 (2d ed., Prentice Hall 1996). Fabozzi notes the trend in capital markets away from dominance by retail investors to institutional investors, the latter being more willing to invest across borders in both developed and developing capital markets. *Id.*

[216] On the other hand, even assuming that a relatively short credit card usage history exists with South Korean consumers, the underlying principle should exist that such consumers are free to choose what they can or cannot purchase and, moreover, should bear some or all of the responsibility for their fiscal consumption behavior, whether it be prudent or reckless. Similarly, who then should be held responsible if the IDRA does not have the intended effect of creating a "soft landing" for uncontrolled credit card debt? If the answer is that the fault still lies on the individual spender, per the principle of *caveat emptor*, then little rationale exists for the IDRA in the first place because the policy would merely shift massive credit card debt from one class (the original credit card debtors) to another class (the taxpayers).

[217] However, market intervention of the Korean government is considered a factor that has a negative effect on the Korean economy. The IMF said in a statement that the "Korean economy is better guided by market principles thanks to reduced government intervention in recent years." Sim Sung-tae, *IMF Sees Rebound in Korean Economy by Early Next Year*, KOREA HERALD, Oct. 29, 2004, at 7. Further, less risk exists that the proposed legislation may overshoot or undershoot its objectives, triggering a potential negative financial blip or, in a more extreme case, a potential mass sell-off in the Korean financial markets. Instead, the focus could instead be placed on improving credit history checks on individuals applying for credit cards, and on improving risk management of credit lending institutions.

profile legislative protection, and therefore may be less susceptible to causing a negative financial blip relative to the IDRA.

VI. CONCLUSION

The apparent negative externalities of the credit card spending binge in South Korea and Thailand and the subsequent hangover have recently been met with strong market intervention by both governments. In South Korea, this intervention was in the form of the IDRA, and in Thailand in the form of the 2004 BOT Regulation. The potential benefits of such legislation are that a massive influx of taxpayer capital will be reallocated to bail out credit card debtors in order to avoid the perceived potential of a rapidly downward spiraling financial infrastructure that could potentially mirror the 1997-98 Crisis. The potential downside is that legislation, such as the IDRA, may lead to moral hazard risks whereby consumers will be given an incentive, or alternatively, little disincentive to not spend recklessly. Separate but related to this, valuable taxpayer revenue could instead be used for potentially more beneficial purposes if allocated elsewhere.

Despite the apparent merits of the IDRA, the most practical solution for South Korea's post 1997-98 Crisis credit card hangover should not be significant government intervention (as clear signals of market failure do not yet exist) that may trigger moral hazard risk and thus more reckless debt spending, either now or in the future. Rather, the solution should be to not implement such market interventionist legislation due to the relatively greater downsides of spurring moral hazard relative to the potential upsides of bailing out individual debtors.

For Thailand, the 2004 BOT Regulation may not provide a direct solution for, or even a best model to address, the overspending problems, but may prove more effective as an example of a preemptive measure, as opposed to a bailout measure. At the same time, strong efforts should be made to implement sound long-term risk management so that lines of credit are given only to those individuals that have a relatively low probability of defaulting on payment. By applying this approach, the financial infrastructures of post 1997-98 South Korea and Thailand can become both more flexible and crisis-resistant.[218]

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[218] At the same time, this will signal to other financial players the respect for market fundamentals in South Korea and Thailand, both in theory and in practice.