

Creditors' claims in bankruptcy actions

The continuous rise in oil prices over the past two years has reached an unprecedented level. The reason for such a sharp rise is the source of much debate. However, what is clear is the devastating effect high oil prices are having on the performance of many businesses in Thailand. The records of the Justice Court Office reveal that the number of bankruptcy cases and cases of dishonoured cheques has steadily increased over the same two-year period. This has a knock-on effect throughout the economy as other businesses suffer as a result of the failure of these bankrupt businesses to pay their debts. In this article we outline the procedure for making a claim for debt repayment in bankruptcy proceedings.

Under the Thai Bankruptcy Act, a creditor can file a bankruptcy case against a debtor when all of the following conditions are met:

1. The debtor is insolvent.
2. The debtor is a natural person who is indebted to one or several plaintiff creditors in an amount of not less than one million baht or the debtor is a juristic person who is indebted to one or several plaintiff creditors in an amount of not less than two million baht.
3. The said debt can be determined in a definite amount, irrespective of whether the debt is due for payment immediately or at a future date.

Insolvency can be proven in several ways. One method for the creditor to establish the debtor's insolvency is to send two demand letters at least 30 days apart. If the debtor does not pay the debt following receipt, insolvency is established.

On receipt of the petition, the Court will schedule a hearing to consider the facts. If the Court finds that the above conditions are met, it will issue an order for absolute receivership against the debtor. By this order, the debtor is no longer permitted to operate his or her business and is prohibited from doing any act relating to his or her assets unless such act is approved by the Court or the official receiver.

The Court will appoint an official receiver of the bankrupt estate, who has the power and responsibility to:

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

Therefore, the debtor must hand over

all of the assets, company seals, accounting ledgers, and documents relating to his or her assets and business to the receiver.

Once the Court issues an absolute receivership order, the official receiver must publish such order in the *Government Gazette* and in at least one daily newspaper. All creditors, including the plaintiff creditor in the bankruptcy case, must submit an application for debt repayment to the official receiver within two months of the date of the order for absolute receivership. For creditors residing outside of Thailand, the official receiver is entitled to extend the period for submission of the application for debt repayment by another two months.

Foreign creditors must also meet the following conditions to be entitled to claim debt repayment:

1. They must prove that creditors in Thailand are similarly entitled to claim for payment of debts in bankruptcy proceedings under the laws, and before the courts, of their own country, which is known as reciprocity.
2. They must address whether and to what extent they have the right to receive the debtor's assets that are located outside of Thailand and they must agree that these assets will be pooled with the debtor's assets in Thailand for distribution to all creditors.

If any foreign creditor cannot establish the reciprocity principle, the official receiver and the court will not allow that foreign creditor to receive a share of the assets from the debtor in Thailand (Supreme Court Precedent Case No. 1310/1960).

In the case of Hong Kong, although there is no law clearly stating that a foreign creditor can submit an application for debt repayment in Hong Kong, if a creditor from Hong Kong can prove to the Thai official receiver that there is no law prohibiting a foreign creditor from submitting such application in Hong Kong, the Thai official receiver and the Thai Court will allow the Hong Kong creditor to submit an application for debt repayment in Thailand (Supreme Court Precedent Case No. 1473/1960).

As Thailand is a civil law country, Supreme Court precedents are not binding but they are persuasive, and Thai courts are likely to follow the past rulings of the Supreme Court.

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