



CORPORATE COUNSELLOR

Reorganisation: Business survival during a crisis

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Thailand is no stranger to tumultuous events, be it unrest in the Deep South, widespread flooding, economic slowdowns in trading partners, domestic protests, exchange rate instability, global economic crises or flailing tourism.

Inevitably, businesses and often entire sectors are directly affected by these events. Businesses do not exist in isolation, so one or more companies facing cash-flow problems can begin a chain reaction of accounts receivable and accounts payable rippling outward. With short-term credit increasingly difficult to come by, companies become trapped in a vicious circle, losing the ability to invest in developing new sources of revenue and using any cash generated to repay old debts.

One possible way to address this problem is reorganisation -- a process that sounds the death knell for some but to debtors a potential solution. This process, authorised under Thailand's Bankruptcy Act, provides a means for a company to protect itself from creditors while being allowed to operate.

Under the reorganisation process, once the Bankruptcy Court accepts a company's petition -- the company being the debtor -- all its outstanding debts are frozen. This "automatic stay" ensures the debtor will be protected under bankruptcy law from debt collection efforts by creditors.

During an automatic stay, the debtor may continue to operate, subject to certain restrictions -- for example, it may not dispose of, distribute, transfer, pay debt, create debt or act in any way that may encumber its assets except as necessary in the ordinary course of business or as permitted by the court.

Creditors also receive a measure of protection. Debtors are not allowed to treat any creditors preferentially by paying off specific debts to one creditor and leaving fewer assets for others. Creditors or government agencies can also submit a reorganisation petition on behalf of a debtor in order to obtain this protection.

The following is a summary of the criteria a company seeking protection during reorganisation must meet as well as the process involved:

The following persons or parties are entitled to submit reorganisation petitions:

a single creditor or group of creditors owed not less than 10 million baht; and

government agencies such as the Bank of Thailand, the Insurance Department and the Securities and Exchange Commission.

Principles of reorganisation petitions: The following criteria need to be met:

The debtor is insolvent and indebted to one or more creditors for an amount not less than 10 million baht regardless of whether such debt is already due;

There are sufficient grounds to believe the debtor's business can be successfully reorganised; and

The petitioner is honest in submitting the petition.

Court hearing: Once the Bankruptcy Court determines the petition meets the basic legal requirements, it will schedule a hearing and take evidence to determine whether to approve reorganisation. If the court does not accept the petition, it will dismiss the case, and the company will not be granted protection from its creditors.

Appointing the planner: Once the court approves a reorganisation, it will appoint a planner to prepare and submit a business reorganisation plan. After the planner is appointed, the official receiver will publish the court's reorganisation order in the Royal Gazette and in two widely circulated daily newspapers. All creditors must submit debt repayment applications to the official receiver, which will evaluate them and render an order as to voting rights in approving the reorganisation plan.

Planner's duty and rights: The planner has a duty to draft the reorganisation plan and is empowered to refinance, restructure and reduce debts as it deems necessary. It must submit the plan to the official receiver.

Creditors' meeting: After receiving the reorganisation plan, the official receiver will hold a creditors' meeting to discuss and approve the plan by a special resolution. The official receiver will report the outcome to the court. If a resolution accepting the plan is passed and the court agrees and finds the resolution is not illegal, it will issue an order approving the plan.

Plan approval: Once the court approves the plan, the rights and duties of the planner will immediately transfer to the plan administrator, who has the right to manage the debtor's business under the plan.

Successful plan administration: If the plan is successful in rehabilitating the debtor, the court may order a cancellation of the business reorganisation order, at which point the debtor, its directors and shareholders will regain control over the business. A successful reorganisation benefits all stakeholders.

Reorganisation can be a lifeline for a business struggling due to factors beyond its control, providing it with protection and, most importantly, time to get back on its feet. But reorganisation is not always the right solution, as it may have far-reaching effects beyond the immediate protection. Each business facing difficulties must carefully evaluate its options on an ad hoc basis.

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