

Creditors' claims for debt repayment in reorganisation

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Thailand's economy does not paint an image that befits the country's reputation as the "Land of Smiles". Politics, drought, floods and conflict in the Deep South have taken their toll on Thai businesses. As a result, we have seen a steadily rising number of business reorganisations over the past few years. This article outlines Thailand's business reorganisation procedures and how creditors can collect debts from companies involved in reorganisation.

Under the Thai Bankruptcy Act, a creditor, debtor or government agency under certain circumstances can file a reorganisation petition when all of the following conditions have been met:

The debtor is insolvent;

The debtor is a juristic person who is indebted to one or more creditors for an amount of not less than 10 million baht;

The debt can be determined in a definite amount, irrespective of whether it is due for payment immediately or at a future date; and

There is a reasonable ground and prospect to reorganise the business of the debtor.

Insolvency can be proved in a number of ways. One method for a creditor to prove a debtor's insolvency is to send at least two demand letters at intervals of at least 30 days. If the debtor defaults on payment of the debt after receipt of the letters, insolvency is established.

On receipt of the petition, the court will schedule a hearing to consider the facts. If the court finds that the conditions above to file a reorganisation petition are met, it will issue an order to approve the debtor to reorganise.

The court will also appoint a planner. The planner prepares a business reorganisation plan under the Bankruptcy Act. If the court does not appoint a planner, it will order the official receiver to organise a creditors' meeting to select the planner. Once the court appoints the planner, the power and duties in managing the debtor's business and assets, and all legal rights of the debtor's shareholders -- except the right to receive a dividend -- are vested in the planner.

When the court approves the reorganisation of the debtor's business but does not appoint a planner, the debtor's executives must hand over all of the company's assets, company seals, accounting ledgers and documents relating to the debtor's assets and business to a temporary administrator or an official receiver, as the case may be. In addition, the official receiver must publish the court's rehabilitation order in the Royal Gazette and in at least two widely circulated daily newspapers.

Once the court issues its order to appoint a planner, all creditors must submit an application for debt repayment and a copy of it to the official receiver within one month of the date that the appointment of the planner is published.

At this time, creditors can seek the repayment of their debts. Creditors can submit debt repayment applications to the official receiver if the following conditions are met:

The debt obligation occurred before the court issued an order to reorganise the business regardless of whether the debt has matured or is conditional;

The obligation must not have arisen in violation of legal prohibitions or good morals; and

The obligation must be legally enforceable.

The creditor will have voting rights in the full amount of the obligation as stated in the debt repayment application if the other creditors, the debtor or the planner do not object. In addition, the official receiver has the authority to authorise the repayment of the debt unless there are suitable grounds for ordering otherwise.

If a creditor, debtor or the planner objects to a debt repayment application, the official receiver must urgently investigate and render an order on whether the creditor will be allowed to vote, and state the amount of debt for voting. The official receiver also has the right to order the following:

dismiss the debt repayment application;

approve full repayment of the debt; or

approve partial repayment of the debt.

Any "concerned person" associated with the debt repayment application can file an objection to the court within 14 days from the date of receipt of the official receiver's order.

If the debt is denominated in a foreign currency, the amount must be converted into Thai baht according to the daily exchange rate announced by the Bank of Thailand on the date that the court issued the order to reorganise the business.

Creditors can also set-off debt in certain circumstances. A set-off can occur if a creditor is entitled to submit a debt repayment application and the debtor is indebted to the creditor when the court issues the business reorganisation order. However, if the creditor acquires the claim against the debtor after the court issues a business reorganisation order, the set-off is not permitted.

Reorganisation can provide financially troubled businesses with protection and time to recover. As more businesses in Thailand fall on hard times, they must be diligent to ensure that the proper reorganisation procedures are followed. This will stop additional problems from arising.

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