



## New rehabilitation regulations: survival tools for SMEs

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Small and medium-sized enterprises (SMEs) have grown rapidly in Thailand over the past 10 years, creating millions of jobs and contributing to steady economic growth. According to the 2015 annual report of the Office of SME Promotion (Osmep), there were approximately 2.7 million SMEs at the end of 2015, employing around 10 million people, particularly in the tourism, construction and wholesale sectors.

This has prompted the government to issue numerous privileges, such as special rates for loans and tax breaks, that encourage entrepreneurs to start up their own businesses. The latest privilege, issued under the Bankruptcy Act on May 24 this year, offers SMEs the opportunity to rehabilitate and avoid bankruptcy in the face of short-term liquidity problems. This is designed to protect otherwise successful SMEs that experience temporary liquidity problems and are unable to make repayments in the short term.

Unlike previous rehabilitation regulations, which only allowed debtors owing more than 10 million baht to file a request for reorganisation to the court, the new Bankruptcy Act gives SMEs the opportunity to enter rehabilitation if there are reasonable grounds and prospects for rehabilitating the business. This may prevent such SMEs from being declared bankrupt.

**Requirements for rehabilitation:** The Act allows an SME to enter the rehabilitation process regardless of whether it is a natural person, juristic body, partnership or private limited company, provided that it is registered with Osmep or a related government agency, in accordance with the SMEs Promotion Act of 2000.

The Act lowers the minimum threshold of debt that an SME is unable to repay in order to be eligible to enter into the rehabilitation process. The thresholds vary, depending on the type of business. Natural persons are required to have a definite amount of debt amounting to at least 2 million baht. The figure is 3 million baht for juristic bodies, registered or unregistered ordinary partnerships, or limited liability partnerships. For private limited companies, debt must be at least 3 million baht but not more than 10 million.

**Key differences for SMEs:** Under the normal rehabilitation process, a plan preparer is appointed by the court to draft a rehabilitation plan. This plan must be approved by the creditor(s) and the court, and all of these processes will take place once the court has accepted the petition for rehabilitation.

For an SME to apply for rehabilitation, the business or its creditor(s) must file a petition with the Central Bankruptcy Court, together with a rehabilitation plan. This plan must be approved by the creditor(s) holding at least two-thirds of the total amount of debt.

This presents some challenges to SMEs, as they need to organise the creditors' meeting and persuade the majority of creditors to accept the plan, in order to complete the rehabilitation petition and submit the petition to the court. In contrast, under the normal rehabilitation process, the official receiver handles these procedures by sending an official notice to every creditor, inviting them to attend the official creditors' meeting.

For an SME, after the rehabilitation petition has been submitted to the court, a plan preparer is not appointed, and the plan cannot be amended, unlike the normal rehabilitation process. Thereafter, the court has sole discretion as to whether to accept the petition.

**Automatic stays:** Much like the normal rehabilitation process, under the process for SMEs, an automatic stay would be applicable starting from the date the court accepts the rehabilitation petition until:

- the expiration of the period of time stipulated under the rehabilitation plan;
- the date the plan is successfully accomplished;
- the date that the court dismisses the petition, disposes of the case, or repeals the order for business rehabilitation; or
- the business rehabilitation has been cancelled.

As with automatic stays under the normal rehabilitation process, automatic stays under rehabilitation for SMEs prevent creditors from claiming or seizing assets, and they also halt all ongoing seizures and auctioning of assets.

Under the new Bankruptcy Act, the government is effectively offering entrepreneurs protection in the form of a safety net that allows them to survive temporary liquidity problems. Many business operators are expected to take advantage of this, and as a result, SMEs should continue to play an important part in Thailand's economic growth.

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