

BANKRUPTCY LAW IN THAILAND



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I. Introduction

Most economists agree that the COVID-19 pandemic is hastening a global recession on a scale unseen since the Great Depression. As large-scale quarantines, business closures, and a sharp fall in consumer and business spending progress, they will inevitably spiral down to more corporate layoffs and bankruptcies.

To help alleviate the liquidity problems faced by corporations affected by the present crisis, the Bank of Thailand (BOT) on March 20, 2020, cut the policy interest rate by 25 basis points to a new record low of 0.75%. The BOT subsequently issued various other relief measures, including a debt moratorium and low interest soft loans for SMEs, as well as bridge financing for qualified bond issuers from the newly announced Corporate Bond Stabilization Fund. In addition, the BOT has encouraged banks to proactively engage in debt restructuring with qualified corporate clients.

While these measures are laudable, they are only available to certain SMEs and companies with a track record meeting certain criteria—and that the banks deem to have good business prospects. Other businesses, such as SMEs not meeting the BOT criteria and those that have multiple creditors that include non-financial institutions, would not be able to take advantage of these liquidity-easing measures.

Moreover, it is still unknown what the medium to long-term effects of the COVID-19 crisis will be. It has no precedent and the ending is unclear; it may not be as simple as a cyclical downturn in financial liquidity. A scenario of wide-scale bankruptcies is a grim probability.

While this may seem bleak, Thailand's past experience with economic disruption has resulted in a robust and resilient bankruptcy and restructuring framework that provides something of a glimmer of hope. In the past 20 years, Thailand has faced two major financial crises, followed each time by an uptick in bankruptcy and restructuring filings: the so-called *Tom Yum Goong* crisis in 1997, which spread throughout East and Southeast Asia; and the 2008 global financial crisis. The *Tom Yum Goong* crisis spurred the overhaul of bankruptcy laws to allow for corporate reorganization, and filings for court rehabilitation jumped sixfold between 1999 and 2000. In 2008, the aftermath of the financial crisis resulted in the number of bankruptcy cases doubling by 2010.

Building on this experience, a review of Thailand's bankruptcy laws paints a picture of a system that is well prepared for the hard times ahead. This article does just that—examining the evolution of the Thai bankruptcy law and showing how its provisions are designed to be used strategically to provide relief to those in crisis, and to cushion creditors from the impact of those crises.

II. The Thai Bankruptcy System

A. Bankruptcy Court

After being the epicenter of the 1997 Asian financial crisis, Thailand amended its antiquated bankruptcy laws to address the ensuing wave of corporate defaults. A section on Corporate Reorganization was added under chapter 3/1 of the Bankruptcy Act B.E. 2843 (1940), taking effect in 1998. Since then, various provisions and principles have been fine-tuned, with the tenth and most recent amendment

enacted in 2018.

The inclusion of reorganization proceedings in the 1998 amendments necessitated specially trained judges with understanding of business practices. After the Act Establishing Bankruptcy Courts and Bankruptcy Case Procedures passed in 1999, the Central Bankruptcy Court began its operations that same year to adjudicate bankruptcy cases as well as civil matters pertaining to bankruptcy cases. More recently, the Central Bankruptcy Court was given jurisdiction over criminal matters pertaining to bankruptcy as well.

The Central Bankruptcy Court handles all cases in the Bangkok metropolitan area, as well as bankruptcy cases from other provinces that the court chooses to accept. So far, in practice this has meant all cases nationwide, as no other bankruptcy court has been established. According to the law, Regional Bankruptcy Courts may be established under laws that stipulate their jurisdiction and location, but this provision has not yet been exercised.

B. Bankruptcy Procedure

Bankruptcy procedures are governed by the Bankruptcy Act, as amended; the Act Establishing Bankruptcy Courts and Bankruptcy Case Procedures, as amended; the Rules on Bankruptcy Cases; and the Civil Procedure Code.

1. Proceedings in the Court of First Instance

The Bankruptcy Court tries cases without adjournment, unless there is unavoidable necessity, and will issue a ruling as soon as possible. If a party fails to appear in court at a hearing, regardless of whether or not permission has been given, it will be deemed that the party is aware of the court proceedings at that hearing.

2. Appeals

A judgment or order of the Bankruptcy Court regarding a debtor's business rehabilitation, including civil and criminal cases associated with such a case, may be appealed to the Court of Appeal for Specialized Cases within one month from the date when the judgment or order is pronounced. With permission from the Supreme Court, a final appeal may be filed to the Supreme Court under certain circumstances. For instance, if the issue being appealed is related to the public interest or public order, the Supreme Court would grant leave to hear the appeal.

III. Liquidation – Absolute Receivership

A. Overview

Under Thai law, bankruptcy is an involuntary act whereby the law causes the property of a company or debtor to be distributed among its creditors.

B. Bankruptcy Process

1. Who can initiate a bankruptcy action and against whom?

A creditor may initiate a bankruptcy action when:

- a. The debtor is insolvent;
- b. The debtor is indebted to one or several plaintiffs totaling at least THB 1 million if the debtor is a natural person, or at least THB 2 million if the debtor is a juristic person; and
- c. The debt may be determined in a definite amount irrespective of whether it becomes due for payment immediately or at a future date.

Under Thai law, a debtor will be presumed insolvent if any of the following events occurs:

- a. The debtor transfers assets or rights in management of his or her assets to another person, for the benefit of all his or her creditors;
- b. The debtor transfers their assets dishonestly or fraudulently;
- c. The debtor transfers an asset or creates any right over it which may be deemed a preferential transfer if the debtor were declared bankrupt;
- d. The debtor, in order to avoid paying creditors,
 - leaves or remains outside Thailand;
 - removes his or her assets from the jurisdiction of the court; or
 - does not pay money according to a judgment to which he or she has consented;
- e. The debtor's assets have been attached under a writ of execution, or there are no more assets for which attachment is possible;
- f. The debtor declares to the court in any action that he or she cannot pay outstanding debts;
- g. The debtor informs a creditor that he or she cannot pay outstanding debts;
- h. The debtor proposes compromising on outstanding debts, to any two or more creditors; or
- i. The debtor receives at least two demand letters from his or her creditors, at intervals of no less than 30 days, and does not pay the debts.

In filing the petition with the court, the petitioner must deposit THB 5,000 in security money. The court may order the petitioner to deposit additional security money as deemed necessary. Upon request by the receiver, the court has the power to remit the security to the receiver, after deduction of any expenses, for the expenses incurred in the bankruptcy case.

2. Composition

a. Composition prior to Bankruptcy

If the creditors and the debtor wish to avoid a protracted and adversarial bankruptcy action, a composition during bankruptcy may be an attractive alternative. In this case, a debtor desiring to come to a settlement may submit his or her proposed composition in writing to the receiver within seven days after the date of submission of his or her explanation of matters relating to the business to the receiver, or within another period prescribed by the receiver. The receiver then calls a meeting of the creditors to consider the proposal. Acceptance will not bind creditors until the court approves the composition.

The court cannot approve a composition in which no provision is made for repayment of debts, according to the order prescribed by the law relating to the division of the assets of a bankrupt party. The court also may not approve a composition that has no benefit to creditors generally, gives undue preferential treatment to some creditors, or indicates any fact which, if the debtor became bankrupt, would prevent the debtor from being discharged from bankruptcy. In the last case, however, there is an exception. The court can approve such a composition if the debtor posts security for repayment in the amount of at least one-fourth of the total unsecured debt for which creditors can claim repayment.

Once the composition is approved by the creditors and the court, it becomes binding on all creditors. However, a composition does not cause a person who is jointly liable with the debtor or who is a guarantor to be released from his or her liability.

If the debtor fails to repay the debt as agreed in the composition, if there is likelihood that such repayment will be delayed, or if the composition was obtained by fraud, then on the report of the receiver or on the motion of any creditor, the court may terminate the composition and adjudge the debtor as bankrupt.

b. Composition after Bankruptcy

After the court's adjudication of bankruptcy, the debtor may (again) submit a proposal for a composition. However, if the debtor's previous composition was unsuccessful, the debtor is not allowed to submit again within three months of the failure. If the court approves the composition, it may terminate the bankruptcy and restore the power of the debtor to manage his or her business.

3. Discharge from Bankruptcy

A bankrupt party may be discharged from bankruptcy automatically or by court order. The debtor may submit an application by way of a motion to the court asking for an order of discharge from bankruptcy. The discharge will be granted if at least 50% of the assets have been paid to creditors and the bankrupt has not acted dishonestly. Dishonesty will be presumed, for example, if the bankrupt carries on business knowing he or she is unable to pay debts, or if he or she has given preference to any creditor, embezzled, or engaged in borrowing that constitutes public fraud. In any event, a bankrupt who has been discharged from bankruptcy by court order still has the duty to assist in the realization and distribution of his or her assets, as the receiver may require. If the party does not so assist, the court may withdraw the discharge from bankruptcy.

An individual, and not a business, may also be discharged from bankruptcy based on the passage of an automatic discharge period, starting from the date a debtor is adjudged bankrupt. A bankrupt will be automatically discharged after three years. However, if such a person has had a previous bankruptcy within five years, the automatic discharge period will be extended to five years. Also, in cases of dishonest bankrupts, the court may extend the period to ten years. However, for such bankrupts, the court is empowered to shorten the period to five years in cases of special circumstances on the request of the bankrupt or the receiver. Finally, in cases of public fraud, the automatic discharge period is ten years.

Whether discharge takes place via court order or automatically, an order for discharge is published in

the *Government Gazette* and at least one daily newspaper. Such means of discharge do not release a person from liability if they are a partner with the bankrupt, jointly liable with the bankrupt, or in the position of a guarantor of the bankrupt. Similarly, neither means of discharge will release tax debt or debts arising from dishonesty or fraud.

C. Proceedings where the Debtor Is a Juristic Person

Aside from creditors being able to file a bankruptcy action as shown above, the liquidator of a juristic person may also petition the court to adjudge the juristic person bankrupt if it appears that the contribution of shares has been fully paid up and the assets are insufficient to cover the debts. The court then issues an order placing the juristic person immediately under absolute receivership, and the meeting of creditors will appoint one creditor to have the rights and duties of a petitioning creditor. This creditor, as well as the receiver, may file a motion for the adjudication of bankruptcy of unlimited partners in the juristic person without filing a new action. The court may then order a temporary receivership of that person's assets. The petitioning creditor may be required to give security against loss in an amount the court deems proper. If it appears later that the person was not or is not an unlimited partner, the court will terminate the receivership. If the person filed a motion to the court, the court may order the creditor who asked for the receivership to pay compensation to the person in a sum the court considers proper, or it may order the receiver to make the payment out of the assets of the juristic person.

D. Submission of Claims for Repayment of Debts

When the court orders the debtor to be placed under absolute receivership, all of its assets and the business are permanently placed under the complete control of the receiver. All creditors except secured creditors are then required to file their claim for repayment of debt with the receiver within two months of the receivership order being published in the *Government Gazette*. The receiver may extend this period by up to two additional months for creditors residing outside of Thailand.

In a case where a secured creditor files the petition, the following conditions are required:

- a. The creditor is not prohibited from enforcing the debts against the debtor's assets in excess of that placed as a security; and
- b. The creditor must state in the complaint that, if the debtor becomes bankrupt, the creditor is willing to waive the security for the benefit of all creditors, or make an appraisal of the security in the complaint which, after deduction of the obligation due to him or her, is still in at least THB 1 million deficit for a debtor who is a natural person, or THB 2 million for a debtor who is a juristic person.

Foreign creditors who live outside Thailand can claim for repayment of debts in the bankruptcy action upon compliance with the following conditions:

- a. They must prove that creditors in Thailand are similarly entitled to apply for payment of debts in bankruptcy actions under the laws and in the court of their country; and
- b. They must make a declaration as to whether, and to what extent, they have received or are entitled to receive the debtor's property or share of property located outside Thailand, and a

declaration that they agree to deliver the property or the share to be added as part of the debtor's estate within Thailand.

If the creditor cannot file a claim for repayment of debt within the period because of *force majeure*, the creditor may submit a request to file a claim with the explanation of the *force majeure*. If the court deems the grounds of *force majeure* reasonable, it may grant an extension for a specific period. However, the creditor only has the right to repayment from the debtor's remaining property after the distribution of property carried out prior to the creditor's submission of the application for repayment of debt, without prejudice to any previous act of the court, the receiver, or a meeting of creditors.

IV. Business Reorganization

A. Overview

Proceedings for business reorganization are governed by chapter 3/1 of the Bankruptcy Act. The procedures start with the filing of a petition for restructuring by the debtor, by one or more creditors owed more than THB 10 million, or by a relevant government authority. When the court approves the application for restructuring, it gives the debtor protection by declaring an automatic stay that restricts further action against the company.

After the court's approval of the application, the creditors must select a plan preparer to draft a rehabilitation plan. Upon the court's appointment of the plan preparer, all creditors must submit their claims within one month. The plan preparer must then draft the plan and submit it to the creditors for their consideration within three months. Once approved by a resolution of the creditors (who are grouped into various categories), the plan is submitted to the court for final approval; when granted, it becomes binding on all creditors. The plan is then implemented within a five-year timeframe, with two one-year extensions allowed. Within this timeframe, if the court decides that the plan is not successful, it may order its termination and may put the company under absolute receivership, leading to bankruptcy proceedings.

B. Filing a Petition for Business Reorganization

1. Who Can Initiate a Business Reorganization Action?

Debtors (which, for business reorganization, are defined by the Bankruptcy Act as only juristic persons), creditors owed more than THB 10 million, or a relevant government authority may file a petition for reorganization of the debtor's business regardless of whether a lawsuit for bankruptcy has been filed against the debtor. However, it must be established that the debtor is insolvent and that there are reasonable grounds and prospects to reorganize the business.

Filing a petition for reorganization will not be allowed if:

- a. the court has ordered the debtor to be under absolute receivership; or
- b. the court or the registrar has ordered a dissolution or revocation of the debtor's registration as a juristic person, the dissolution of the juristic person has been registered, or the juristic person must be dissolved for other reasons.

2. Specifics of the Petition

The petition for business reorganization must clearly set out:

- a. the insolvency of the debtor;
- b. list and addresses of all creditors to whom the debtor is indebted alone or altogether for an amount of at least THB 10 million;
- c. reasonable grounds and prospects for rehabilitating the business;
- d. the name and qualifications of the plan preparer; and
- e. a letter of consent of the plan preparer.

If a creditor is the petitioner, it must annex the data of other known creditors; if the debtor is the petitioner, it must annex the list of all of its existing assets and debts, including data of the creditors.

3. Automatic Stay

When the court approves the application for reorganization, it gives the debtor protection by declaring an automatic stay that restricts the ability of creditors to take debt recovery actions against the company. The stay prevents any form of legal process being commenced or continued against the debtor, including the filing of dissolution or bankruptcy petitions.

The automatic stay is a severe limitation for the secured creditor on the enforcement of its securities. It prevents a secured creditor from filing an action in a civil case against a debtor in respect of the debtor's assets without the court's approval. Secured creditors are also prohibited from enforcing payment of debt against the security asset unless otherwise approved by the court—up to a period of one year from the date of the court's acceptance of the petition. This period can be extended not more than twice for a period of up to six months each time. In order to apply for an amendment or annulment of the limitation, the secured creditor will have to prove that the stay or limitation is not necessary for the business reorganization, or that the rights of secured creditors are not sufficiently protected. On the other hand, the protection will be deemed sufficient if there has been a repayment of debt to secured creditors in an amount equal to the decrease in value of the assets used as security, if security has been given to secured creditors in compensation for the decrease in value of the original security, or if secured creditors have consented to, or the court approves, any other procedure allowing the secured creditors to receive, on termination of the procedure(s), repayment at the value of the assets used as security at the time the petition for business reorganization was submitted, including interest and contractual benefits.

During an automatic stay, the debtor cannot dispose of, distribute, transfer, let, pay debt, create debt, or do anything that creates encumbrances over its assets except where essential so that the debtor may carry on its business as normal, unless otherwise ordered by the court. Operators of public utilities (e.g., electricity, water, telephone) may also not suspend the services supplied to the debtor unless otherwise approved by the court or unless the debtor, the receiver, the interim executive, the plan preparer, the plan administrator, or the interim plan administrator fails two consecutive times to pay service charges arising after the date on which the court issues the order of the business rehabilitation.

C. Plan Preparer, Plan Administrator, and Receiver

a. Plan Preparer

When the court approves the application for reorganization, a plan preparer must be appointed to make a plan for reorganization of the business.

The plan preparer need not have any special qualifications. In Thailand, there is no formal insolvency profession in the manner that exists in some other jurisdictions, so the plan preparer can effectively be any person, company, or committee nominated by the debtor or creditor, and approved by the court.

With the dual functions of continuing the business and preparing a plan, the plan preparer's roles are very broad and powerful. Once appointed by the court, the powers and duties of the debtor's directors in managing the business, as well as all the legal rights of the debtor's shareholders (except the right to receive dividends), are vested in the plan preparer.

Initially, the party requesting reorganization has the prerogative to appoint the plan preparer. If there are no objections from the debtor or creditor, the court, if it is of the opinion that the person is suitable to be the plan preparer, will appoint the person nominated by the petitioner. However, if there are objections from either the debtor or creditor, the debtor then gets the prerogative to nominate the plan preparer. If the debtor does not do so, a meeting of the creditors will be called by the receiver, who will then publish an advertisement fixing the day, time, and place of the meeting for the purpose of selecting the plan preparer. This notification must appear in at least one daily newspaper, at least seven days in advance of the meeting; notification must also be extended to the debtor and all known creditors.

In nominating a plan preparer in the meeting of the creditors, a letter of consent from the nominated person must first be supplied. However, if the debtor proposes a plan preparer to which the creditors object, the creditors may only override the debtor's choice and replace it with their own nominee, if those voting in favor of doings are cumulatively owed at least two-thirds of the debt. Voting is limited to creditors who have requested repayment under the business reorganization.

Since creditors do not have absolute power in choosing the plan preparer, creditors who have a smaller voice, or none at all, may have difficulty in this step, while larger creditors may have less concern.

If the court has ordered a business reorganization but has not yet appointed a plan preparer, all legal rights of the debtor's shareholders will be suspended with the exception of the right to receive dividends, which will be vested in the interim executive or the receiver until a plan preparer is appointed.

b. Plan Administrator

The plan administrator's principal duties consist of managing the business and assets of the debtor according to the business reorganization plan. The administrator's appointment, tenure, qualifications, and compensation are specified in the plan, and duties commence upon the court order approving the plan. The administrator may also propose revisions to the plan and must report regularly to the receiver and the court on the plan's implementation and progress (see below for more details).

c. Receiver

The receiver is a government official who acts in an administrative capacity, being responsible for calling meetings and receiving claims for payment. Such meetings include the creditors' meeting for selecting the plan preparer and the creditors' meeting to consider the plan. Before the formal appointment of the plan preparer, the receiver is also vested with the duty to take over the business of the debtor. During plan implementation, the receiver is entrusted with the duty of supervising the actions of the plan administrator, who can be removed by the court at the receiver's recommendation. Generally, the receiver takes over the rights and duties of the plan preparer or plan administrator if either does not exist.

D. Claim for Repayment

Applications for repayment must be made within one month after the court's appointment of the plan preparer is published. All creditors, including secured, unsecured, and judgment creditors, must file according to the same procedures. Creditors eligible for repayment that do not apply within this period forfeit their right to receive payment, unless the plan provides otherwise or the court cancels the business reorganization order. Debts for which repayment can be claimed are only those that occurred before the court issued the reorganization order, regardless of whether the debt has matured or is conditional. For debts that were created between the reorganization order and the appointment of the plan preparer, the creditors have rights according to the time periods stipulated in the plan without having to apply for repayment of debt under business reorganization. These creditors must, however, send a letter to the plan preparer asking them to issue a letter for their claim prior to the meeting to discuss the plan.

As for the actual repayment of debts, the official receiver has the authority to authorize payments. However, debts that can be repaid are limited to those that have not been opposed by the plan preparer, the other creditors, or the debtor. If any person opposes a filed application, the official receiver will investigate the matter and either approve, partially approve, or dismiss the application. Any objections to the orders issued by the receiver may be filed with the court within 14 days after learning of the issued order.

For foreign creditors, the currency of payment is of particular concern. If the debt applied for is in foreign currency, the amount must be converted into Thai baht, based on the exchange rate on the day the reorganization order is issued. In these times of fluctuating exchange rates, one can envision the huge gains or losses that could be made just because of this particular rule.

New creditors, or those injecting fresh funds into the company for its reorganization, are given the right to repayment in accordance with the plan. However, unlike in jurisdictions where new creditors enjoy "super priority," Thai legislation does not automatically entitle these new creditors to have priority over the other creditors.

E. Annuling a Juristic Act Already Executed

The plan preparer or receiver may ask the court to cancel a fraudulent act, pursuant to the Civil and Commercial Code, by filing a motion to that effect. If the juristic act subject to this motion arose within one year before the date of filing of the petition, if it is a gratuitous act, or if it is an act in which the

debtor received less than appropriate compensation, it is deemed that the debtor and the person who was enriched knew that it would prejudice other creditors. The court may order the cancellation of any transfer of assets committed within three months before the petition (or one year before, if the person taking advantage is an insider of the debtor) with the intent of putting a creditor in an advantageous position.

F. The Plan

a. Specifics of the Plan

At a minimum, the plan must contain:

- a. the reasons for reorganizing the business;
- b. details concerning the assets, liabilities, and other binding obligations of the debtor at the time the court orders business reorganization;
- c. principles and methods of business reorganization;
- d. redemption of collateral if there are secured creditors and liabilities of a guarantor;
- e. ways to solve problems stemming from a temporary lack of liquidity during plan implementation;
- f. action to be taken in cases in which a claim or debt is assigned;
- g. the name, qualifications, and letter of consent of the plan administrator as well as information about compensation;
- h. the appointment of the plan administrator and his or her release from the position;
- i. the plan implementation period (five years maximum); and
- j. the refusal of assets of the debtor or refusal of contractual rights, if the assets of the debtor or contractual rights have obligations that exceed the benefits to be derived from them.

b. Creditors' Meeting for Approval of the Plan

The plan preparer, after having been officially appointed by the court and announced in the *Government Gazette*, will proceed to draft the plan. This task must be completed within three months, with two possible extensions of one month each. The plan is then sent to all related parties. After receiving the plan, the receiver will call a meeting of the creditors in order to discuss whether to accept the plan or how to revise it. A creditor, the debtor, or the plan preparer may request revision of the plan by submitting an application to the receiver at least three days in advance of the meeting.

The resolution approving the plan must be passed by the creditors according to their classifications as explained below. The classifications include the following four groups:

- a. Secured creditors having secured debts of at least 15% of the total debts;
- b. Other secured creditors not included above;
- c. Unsecured creditors;
- d. Preferred creditors (i.e., creditors under Sec. 130 *bis*).

The resolution approving the plan must be made by:

- a. the creditors' meeting of each group of creditors, with the creditors who approve the plan at the meeting of all groups of creditors holding at least two-thirds of the debt of the voting creditors who attended the meeting in person; or
- b. the creditors' meeting of at least one group of the creditors, provided that the plan is approved by a majority of the creditors with debts cumulatively comprising at least two-thirds of the total debts owed to the voting creditors attending the meeting in person or by proxy, and where the aggregate amount of the debts held by creditors voting to approve in meetings of the groups of creditors represents at least 50 percent of the total debt of the voting creditors who attended the meeting in person or by proxy.

c. Proceedings after the Court Accepts the Business Reorganization Plan

Once the court accepts a plan, it becomes binding on all creditors, and the plan administrator becomes responsible for managing the business and assets of the debtor according to the business reorganization plan. The administrator may propose revisions and up to two extensions of the implementation period for up to one year per extension. If, however, it is clear that the plan has almost been fulfilled, the plan administrator may request an extension for as long as necessary. The law requires the administrator to report regularly to the receiver and the court on the plan's implementation and whether the reorganization of the business has been completed. Depending on the plan, the administrator may also ask the court to permit the amendment or the establishment of new Articles of Association or a new Memorandum of Association for the debtor.

d. Plan Implementation—Creditors' Committee

During this time, the creditors may appoint a committee of three to seven creditors to monitor plan implementation. Committee members must be from the group of creditors, or those assigned by the creditors to act on their behalf. Each creditor may have only one representative.

G. Business Reorganization Procedures for SMEs

In 2016, the Bankruptcy Act was amended (Bankruptcy Act (No.9) B.E. 2559 (2016)) to make it easier for registered SMEs to utilize business reorganization procedures.

To file a petition under this amendment, debtors must meet the following qualifications:

- a. The debtor may be a natural person, a body of persons, a nonregistered ordinary partnership, a juristic ordinary partnership, a limited partnership, a limited company, or another juristic person, as prescribed in ministerial regulations, that is registered with the Office of Small and Medium Enterprises Promotion or other government agencies in accordance with the SME Promotion Act B.E. 2543 (2000).
- b. The debtor must be:
 - an ordinary person who has a definite debt of at least THB 2 million;
 - a body of persons, a nonregistered ordinary partnership, an ordinary juristic partnership, a limited partnership, or another juristic person as prescribed in ministerial regulations who has a definite debt of at least THB 3 million; or

- a limited company that has a definite debt of THB 3–10 million, regardless of whether the debt is due or not.
- c. There must be reasonable grounds and prospects for rehabilitating the debtor’s business, and the debtor must be unable pay all of its debt, which will be assumed if any of the following events occurs:
- The debtor has insufficient property against its liabilities;
 - The debtor fails to pay debt by the due date and again within 30 days of receipt of a demand letter from the creditor;
 - The debtor has no property for legal execution under the court judgment, or the debtor has insufficient property to pay debt even after the creditor requests for legal execution against the debtor;
 - The debtor has defaulted on payment of debt to any creditor, and the circumstances show that the debtor has or might have defaulted to any other creditor; or
 - The debtor’s cash flow is insufficient to pay debt.

Filing a petition for reorganization will not be allowed in the event that:

- a. the court has ordered the debtor to be under an absolute receivership;
- b. the court or the registrar has ordered dissolution or revocation of the debtor’s registration of juristic person, the dissolution of the juristic person has been registered, or the debtor juristic person must be dissolved for other reasons, regardless of whether the liquidation is completed or not; or
- c. within six months prior to submission of application, the court issued an order:
 - rejecting the application;
 - revoking the order of business rehabilitation and plan approval; or
 - cancelling the business rehabilitation of the debtor.

H. Termination/Absolute Receivership

If the court does not approve the plan, or decides to terminate the business reorganization and decides not to place the debtor company under receivership, but instead merely terminates the restructuring plan, the company will be restored to its former state. This means that the stay is lifted and all rights and liabilities of the former shareholders and directors are reinstated. Secured creditors may then decide to foreclose on the debtor’s assets.

If the court orders absolute receivership, the day that the court accepts the petition for consideration will be deemed as the day of the request that the debtor be adjudged bankrupt. The creditors must first apply for repayment with the receiver within two months following the date of publication of absolute receivership. For creditors residing outside Thailand, the deadline is extended by two months.

V. Case Studies

The three case studies below show how the laws and procedures described above apply in practice.

Case Study 1

The debtor is an auto parts supplier in Rayong, Thailand, that manufactures and sells parts to Thailand's numerous automakers. Because of a global economic slowdown, the market for automobiles is particularly bad, causing car manufacturers and their suppliers to suffer financially. The debtor is in dire financial straits and can barely pay its employees. The economic crisis has caused the debtor to default on loan payments for machinery and rental payments for the factory. Multiple creditors have already sent default notices to the debtor and have threatened imminent litigation.

The debtor is sure that its business will improve as soon as market conditions get better; it just needs to survive the current economic downturn. To obtain some breathing room, the debtor files a petition with the Central Bankruptcy Court for business reorganization. The debtor explains to the court that the company is insolvent, is indebted for more than THB 10 million, has good prospects to rehabilitate the business, and has chosen a plan preparer.

The court reviews and accepts the petition. The court's acceptance causes an automatic stay to be implemented, so creditors now cannot file lawsuits against the debtor while the stay is in place. The main creditors decide to work with the debtor to aid in the restructuring. Toward that end, they agree on the debtor's choice of plan preparer.

With the creditors' blessing, the preparer works closely with the debtor and drafts a rehabilitation plan for the creditors' approval. After some tweaks and compromises, the creditors approve the plan. The debtor then submits the plan to the court.

The court reviews and approves the plan, which now binds all creditors. The plan administrator becomes the new manager of the debtor's business and assets. The plan is implemented, as all parties hope the economic crisis will pass and the debtor can successfully restructure to become the profitable company it once was.

Case Study 2

The debtor is a Thai subsidiary of a U.S. multinational. The debtor imports and distributes machinery to Thai industrial manufacturers. The debtor has been losing money for a long time, and the parent has decided to shut down its subsidiary's Thai operations.

The debtor, which is insolvent, registers the dissolution with the Ministry of Commerce. The debtor also appoints a liquidator, who is the sole foreign director.

The liquidator then files a petition for bankruptcy with the Central Bankruptcy Court. The parent company is the only creditor of the debtor, so the bankruptcy process proceeds without any challenges, culminating with the court issuing an absolute receivership order on the debtor. The debtor is now adjudged bankrupt.

Case Study 3

The debtor is a Thai subsidiary of a European multinational fashion retailer. Because of a market downturn, the debtor owes substantial sums to many suppliers, lessors, and other creditors. However, the parent company still believes strongly in the Thai market and gathers a group of investors to help rescue the retailer. Implementing the rescue and distributing the funds will take time, however.

The debtor files a petition with the Central Bankruptcy Court with the aim of settling its debts with creditors under a composition model. All parties wish to avoid an adversarial process and want to get back to business. After a few months of negotiations between the debtor, the new investors, and the major creditors, the debtor prepares a settlement plan where the creditors are paid in installments over a period of time.

The debtor then submits the settlement plan to the receiver. Within a short time, the receiver calls a meeting of the creditors. The creditors agree on the plan. The court subsequently issues an order approving the composition. Since the composition contains provisions where all creditors are paid (albeit with some discounts), the court issues an order approving the composition. The composition is now binding on all parties.

the study. The first author (SM) was the primary investigator and was responsible for the design, data collection, and data analysis. The second author (MM) was responsible for the data collection and data analysis. The third author (MM) was responsible for the data collection and data analysis. The fourth author (MM) was responsible for the data collection and data analysis.

Methods

Study design

The study was a cross-sectional study. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran.

Sample

The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran.

Measures

The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran.

Results

The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran. The study was conducted in the city of Tehran, Iran.

Conclusion

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References

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