

# Last resort for debtors

## Bankruptcy: Long-term consequences means courts are very careful

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The continuing fallout from the 1997 crisis has drawn increasing attention to local bankruptcy procedures, for both corporate and individual debtors. According to the Siam Premier International Law Office, the number of bankruptcy cases has been increasing by 60% to 70% a year due to the poor post-crisis economy.

Given the high number of cases now in the system, it is timely to look at what bankruptcy means legally and what consequences it can bring.

Simply put, a creditor can file a bankruptcy claim against a debtor if it believes the latter is unable to repay the debts. The consequence of the legal action is to take control of the debtor's assets, sell them and obtain the money to repay what was owed.

According to the Bankruptcy Act, a creditor can file a bankruptcy claim against the debtor when the debtor is insolvent. A debtor who is an individual must be indebted to one or more petitioning creditors for at least one million baht. A debtor that is a juristic entity (a partnership, limited partnership, limited company, limited public company or other juristic person) must owe at least two million baht to one or more creditors. In either case, the creditor must be able to show the definite amount of the debt incurred.

"Usually there is an argument as to whether the debtor is really insolvent," says [Santhapat Periera](#), director of the commercial department at the law firm Tilleke & Gibbins.

According to Mr. Santhapat, the court usually investigates the facts and proof very thoroughly before ruling in a bankruptcy claim against a debtor. The process usually takes at least three to four months.

"This is because the court doesn't want to declare anyone bankrupt if not absolutely necessary, as it would affect many things including the debtor's reputation and creditworthiness. And it isn't fair to do so if the debtor is still able to settle the debts," he said.

According to the law, there are particular events that can be interpreted to mean that the debtor is insolvent. These can include the transfer of property or property management rights to others beyond the ambit of creditors, or with an unrealistic or fraudulent intent. If the debtor leaves the country or his premises, hides or escapes by other means, insolvency can be presumed.

The debtor himself can also declare to the court that he is unable to repay his debts.

After hearing a creditor's petition, the court will consider the facts of the indebtedness. If it finds the claim to be well founded, it will order absolute control over the property of the debtor.

However, if the claim is untrue, or the debtor presents evidence to the court that he may be able to repay the debts, the court will dismiss the claim.

Once the court assumes control over the property, the debtor will be prohibited from doing anything in respect of the property or business without approval of the court.

The court will appoint an official receiver to control the debtor's property, which includes everything belonging to the debtor – account books, documents, assets, or even stamps and seals. In any case, no property that has been seized can be sold until the court judges the debtor bankrupt.

The receiver is solely empowered to manage and dispose of the property. He is also able to collect and receive money or property that the debtor is entitled to receive from other parties.

Before the court declares the debtor bankrupt, the debtor can make a petition to compromise with the creditors. If the creditor accepts the compromise, the court will drop the case.

Cancellation of bankruptcy can occur if the debts are fully repaid through asset sales. Cancellation can also occur when the official receiver has made the final distribution of property or in cases where there is no more property to be distributed within the following 10 years.