

Thailand

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Legislation

- 1 What legislation is applicable to bankruptcies and reorganisations?

Bankruptcy Act BE 2483 (AD 1940), as amended (BA).

Excluded entities

- 2 What entities are excluded from bankruptcy proceedings and what legislation applies to them?

Individual debtors having less than 1 million Baht in debt, corporate debtors having less than 2 million Baht in debt, and those debtors that are not proven insolvent according to the BA (See no. 9 below). The Thai Civil and Commercial Code applies to these entities in regard to debt collection and liquidation.

Secured lending and credit (immoveables)

- 3 What are the principal types of security devices (eg mortgages, etc) that are taken on immoveable (real) property?

Only registered mortgages.

Secured lending and credit (moveables)

- 4 What are the principal types of security devices (eg mortgages, etc) that are taken on moveable (personal) property?

Basically include: (i) registered mortgages of some types of movable properties to which the law may provide registration for that purpose (eg industrial machinery and equipment, ships of six tons and over, steam launches or motor boats of five tons and over, or floating houses); and (ii) pledges. Thailand does not yet have the concept of fixed or floating charges as a form of security.

Unsecured credit

- 5 What remedies are available to unsecured creditors (eg seizures, attachments, judgment, etc)? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Seizure or attachment before judgment of whole or part of defendant's property including money or property due to the defendant by a third person is available as one of the provisional protective measures before judgment in any action other than petty cases. It is not generally easy to obtain such provisional seizure or attachment as the court would only grant application upon proof to its satisfaction that: (i) complaint has good cause with sufficient grounds for applying protective measures; and (ii) defendant, in order to delay or obstruct execution of any decree which may be made against him or in order to prejudice plain-

tiff, intends to remove whole or part of his property, or remove it from jurisdiction of court, or transfer, sell or dispose of such, or there are, in the court's opinion, other just and reasonable grounds for seizure or attachment.

In principle, Thai law does not distinguish between Thai and foreign creditors with respect to creditors' rights. However, in civil cases where a plaintiff is a non-resident, the defendant is entitled to have security posted (usually a bank guarantee, land title deed, or cash) to cover the defendant's costs and legal fees in the event the defendant wins the case (see no. 30 for claims by foreign creditors domiciled outside Thailand).

Courts

- 6 What court(s) are involved in the bankruptcy process? Are there restrictions on the matters that the court(s) can deal with?

There are specialised bankruptcy courts which have jurisdiction over all bankruptcy cases as well as all civil cases pertaining to bankruptcy cases. Bankruptcy courts are divided into the Central Bankruptcy Court and the regional bankruptcy courts. Judgments are appealed directly to the Supreme Court.

Voluntary liquidations

- 7 What are the requirements for a debtor to commence a voluntary liquidation of its business? What are the effects of the commencement of the liquidation?

No voluntary liquidation for individuals. Corporate entities may voluntarily liquidate through corporate dissolution/liquidation under the Civil and Commercial Code (CCC). If there are no sufficient assets to meet the liabilities, the liquidators are required under the CCC to apply to the court for a bankruptcy order under the BA.

Involuntary liquidations

- 8 What are the requirements for creditors to successfully place a debtor in involuntary liquidation? What are the effects of the commencement of the liquidation?

The debtor must be indebted to one or more plaintiff creditors for at least 1 million Baht (in case of a natural person), or 2 million Baht (in case of a juristic entity), and such debtor must be insolvent. Under Thai law, debtor's insolvency is presumed if:

- he transfers assets or rights in management of his assets to another person for the benefit of all his creditors;
- he transfers his assets dishonestly or fraudulently, whether such act is done within or outside Thailand;
- he transfers asset or creates any right over it which may be

- deemed a preferential transfer if the debtor were a bankrupt;
- he leaves Thailand or remains outside Thailand, removes his assets from the jurisdiction of the court, or consents to judgment ordering payment of money which he should not pay, in order to avoid paying creditors;
- his assets have been attached under a writ of execution, or there are no more assets capable of being attached;
- he declares to the court in any action that he cannot pay his debts;
- he informs any of his creditors that he cannot pay his debts;
- he submits to any two or more of his creditors a proposal for composition of his debts; or
- he receives demand letters from his creditor not less than twice, at intervals of not less than 30 days, and the debtor does not pay the debt.

The court, based on the grounds stated by the creditor for bankruptcy action, then issues a receivership order. Once a receivership order is made against the debtor, said debtor, by effect of the order, will cease control over his assets, which will then be vested in the official receiver. A creditor may then ask for repayment of his debt only by complying with the procedure prescribed under the BA regardless of whether he is a judgment creditor or a creditor who has filed a civil action but still under trial.

Voluntary reorganisations

9 What are the requirements for a debtor to commence a financial reorganisation? What are the effects of the commencement of the reorganisation?

Requirements for a debtor to commence a financial reorganisation in court:

- Debtor must be indebted to one creditor or more altogether for a definite amount of not less than 10 million Baht.
- There is reasonable ground and prospect to reorganise the business of the debtor.
- The Debtor must be insolvent.

Effects of the commencement of the reorganisation on the debtor

When the court orders a business reorganisation and appoints a planner, the power and duties of the debtor's executives in managing the business and assets cease. All legal rights of the debtor's shareholders are also suspended and vested in the planner, except the right to receive dividend. On the day the court makes an order accepting the petition for business reorganisation, an automatic stay also commences. The stay prevents the debtor from disposing, distributing, paying or creating debt or encumbering its assets in any way, except where such act is essential for carrying on its business as normal, unless otherwise ordered by the court.

Involuntary reorganisations

10 What are the requirements for creditors to commence an involuntary reorganisation? What are the effects of the commencement of the reorganisation?

Requirements for creditors to commence an involuntary reorganisation (nb the requirements for debtor are under no. 9 above):

Effects of the commencement of the reorganisation on the creditor

Creditors shall have the right to receive repayment of the debt only when they file their claim with the receiver within the spec-

ified period. Secured creditors may not file claims for repayment of debt but can enforce payment from assets used as collateral without having to file an application for repayment. However, they must allow the receiver or planner to examine such assets.

Automatic Stay

See no. 9. The stay prevents creditors from commencing or continuing lawsuits against the debtor, filing dissolution or bankruptcy petitions, enforcing payment of debt against the security asset (in case of secured creditors) without the approval of the court, carrying out the execution of a judgment over the assets (in case of judgment creditors), seizing or selling debtor's assets, etc.

Mandatory commencement of insolvency proceedings

11 Are companies required to commence insolvency proceedings in particular circumstances (to avoid personal liability to directors and officers or otherwise)? In what circumstances must companies do so? If proceedings are not commenced, what liabilities can result?

Under the provisions of the CCC with regard to the liquidation of companies, if the liquidators find that after the whole of the contributions or shares have been paid up and the assets are insufficient to meet the liabilities, they must apply at once to the Court to have the company declared bankrupt. As a consequence of not proceeding with bankruptcy, the liquidation process cannot be ended and the liquidators' duty will continue. There are no other mandatory bankruptcy/insolvency proceedings under Thai law.

Doing business in reorganisations

12 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

Debtor may carry on business and use assets according to the court-approved business reorganisation plan and under the direction of the planner or the plan administrator. Claims of creditors who supply goods and services after filing are allowed, such as remuneration for the interim executive, planner, plan administrator, interim plan administrator, debts incurred by them for the purpose of business reorganisation, and debts incurred by the debtor to carry on normal business operations. Creditors and the court have control in supervising the debtor's business activities through nomination of planner, approval of plan, and plan implementation through the creditors' committee.

Sale of assets

13 In (a) a reorganisation or (b) a liquidation, what provisions apply to (1) the sale of specific assets out of the ordinary course of business and to (2) the sale of the entire business of the debtor?

Reorganisation

- The sale of specific assets out of the ordinary course of business is not allowed under the automatic stay provision of the BA, except (i) where such sale is essential for the debtor to carry on his business as normal, (ii) by order of the court where the petition is filed, or (iii) as part of the restructuring plan.
- There is no specific provision for sale of the entire business of the debtor under the BA. However, could be deemed possible if part of the court approved plan.

Liquidation

All assets must be sold or distributed to the creditors to pay off the debts. All other assets not required for performing the obligations of the company must be distributed to the shareholders. Under the BA, the official receiver may sell the assets in any manner which is most convenient and beneficial. However, sale other than by public auction must receive the approval of the creditors' committee, except when the asset is perishable or if kept for any time would deteriorate, or the expense would be disproportionate to the value of the asset.

Stays of proceedings/moratoria

- 14** What prohibitions against the continuation of legal proceedings or the enforcement of claims by secured and unsecured creditors are imposed by legislation or court order in (a) liquidations and (b) reorganisations? In what circumstances can secured or unsecured creditors obtain relief from such prohibitions?

Liquidation

In liquidation under the BA, there are no specific provisions regarding stay or moratoria. The receiver shall join in all civil actions relating to the asset of the debtor which may be pending in court at the time when the court orders the debtor to be under receivership. The court may order the cessation of the hearing of the civil action or make any other order it may deem proper. As long as the court has not ordered the debtor to be under absolute receivership, a creditor may institute a civil action relating to a debt for which he may claim payment under the BA. When the court has ordered the debtor to be under absolute receivership, a creditor may ask for repayment of his debt only in accordance with the procedure under the BA, even though he may be a judgment creditor in an ongoing civil action.

Reorganisation

When the Court approves the application for reorganisation, it gives the debtor protection by declaring an automatic stay, which restricts the ability of creditors to take action against the company to recover any sums owed to them. The stay prevents any form of legal process being commenced or continued against the debtor. The stay also prevents creditors from filing dissolution or bankruptcy petitions. A secured creditor cannot file an action in a civil case against a debtor nor execute any judgment against debtor's assets without the court's approval. Secured creditor may apply for an amendment or annulment of the limitation by proving that the stay or limitation is not necessary for the business reorganisation, or does not sufficiently protect the rights of secured creditors.

Set-off and netting

- 15** To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Liquidation

Set-off is allowed except where the creditor's right of claim against the debtor accrued after the order of receivership of the asset. A creditor who has a right to claim repayment of a debt subject to a condition precedent may ask to set off the debt. However, such person must give security for the sum which he asks to set off.

Reorganisation

If the creditor who is entitled to apply for repayment of debt for business reorganisation is indebted to the debtor at the time of

issue of business reorganisation order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganisation order.

Post-filing credit

- 16** Does your country's insolvency system allow a debtor in (a) a liquidation or (b) a reorganisation to obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Liquidation under the BA

A creditor may claim repayment for debts made even at the time when the creditor knew of the debtor's insolvency if such debts have been created to allow the debtor's business to continue. Such debt is not given priority but treated *pari passu* with the debtor's other unsecured debts.

Reorganisation

Creditors owed the following debts stemming from the business reorganisation pursuant to the plan have the right to be repaid without having to file an application for repayment of debts for business reorganisation:

- Debts created by the plan preparer, plan administrator, interim plan administrator, receiver or an agent of such persons
- tax obligation
- Other debts required to be paid by a specific law, such as contribution to a compensation fund

Successful reorganisations

- 17** What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved?

At a minimum, the plan must contain:

- the reasons for reorganising the business;
- details concerning the assets, liabilities and other binding obligations of the debtor at the time the court orders business reorganisation;
- principles and methods of business reorganisation;
- redemption of collateral in the case where there are secured creditors and liabilities of a guarantor;
- ways to solve the problems if there is a temporary lack of liquidity while implementing the plan;
- action to be taken in cases in which a claim or debt is assigned
- the name, qualification and letter of consent of the plan administrator and compensation;
- the appointment of the plan administrator and his release from this position;
- time period for implementing the plan, which must not exceed five years;
- the refusal of assets of the debtor or contractual rights, in the case where the assets of the debtor or contractual rights have obligations which exceed the benefits to be derived therefrom.

The creditors are classified as follows:

- Secured creditors having secured debts of not less than 15 per cent of the total debts
- Other secured creditors not included above
- Unsecured creditors
- Preferred creditors (ie creditors under Sec 130 bis)

For the approval of the plan, each group of creditors enjoys equal rights. The plan must be approved by a special resolution of a meeting of either:

- each group of creditors, or

Reorganisation

The following debts have a preferential right over the whole assets of the debtor with first priority pursuant to the CCC:

- The remuneration for the interim executive, planner, plan administrator, and interim plan administrator
- The debts incurred by the receiver, interim executive, plan preparer, plan administrator, or interim plan administrator in reorganising the business operation of the debtor, with the exception of debt arising from a wrongful act

Distributions

- 23** How and when are distributions made to creditors in liquidations and reorganisations?

Liquidation/absolute receivership

Division of assets shall at all times be made not more than six months after the date of the court's adjudication of the debtor as bankrupt, unless the court permits an extension of time for good reason. Assets in excess of that reserved for fees and expenses shall be distributed among the creditors.

Reorganisation

Creditors are repaid their debts according to the approved plan.

Voidable transactions

- 24** What types of transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

- Fraudulent transactions under the CCC which may be attacked within one year from the time when the creditor knew of the cause of cancellation, or 10 years since the act was done.
- Fraudulent transactions or acts done or permitted to be done by the debtor without good faith or without consideration or at less than reasonable consideration within one year prior to the application of bankruptcy and thereafter.
- Transactions permitted to be done by the debtor with the intention of giving an undue preference to a creditor occurring within three months prior to the application of bankruptcy and thereafter, or within one year if any advantageous creditor is an insider of the debtor. The cancellation of the transfer or act does not affect the rights of a third party acquired in good faith and with consideration before the filing of the petition.

- 25** Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? (If so, how is the suspect period established?) Can voidable transactions be attacked by secured creditors or by unsecured creditors or only by a liquidator or trustee? Can they be attacked in a reorganisation or suspension of payments or only in a liquidation?

Please see the response to 24 above.

In bankruptcy, only the receiver may attack voidable transactions by filing a motion to the court. In a reorganisation, the planner, plan administrator or receiver, by filing a motion to the court, may attack voidable transactions.

Directors and officers

- 26** Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations (eg, amounts owed to government authorities)?

No, unless they are partners, or acted as guarantors or are jointly liable with the corporation. In such cases, these persons will not be released from liability even after debtor's discharge from bankruptcy.

- 27** Do corporate directors and officers have any liability for pre-bankruptcy actions by their companies? Can they be made subject to sanctions or penalties for other reasons?

Corporate directors and officers have a duty and are criminally responsible, as an equal of the debtor, for operations performed by them during their conduct of the debtor's business.

Creditors' enforcement

- 28** Are there processes by which some or all of the assets of a business can be seized outside of court proceedings? How are these processes carried out?

No, except for pledged property already in the possession of the creditor.

Corporate procedures

- 29** Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Yes. Under a corporate liquidation or dissolution outside of bankruptcy process: (i) the liquidator is a private individual, whereas in bankruptcy proceedings, the receiver is a government official; and (ii) liquidation must be a solvent liquidation, ie if the assets are not sufficient to pay off all liabilities of the company, the liquidator is required to apply to the court to declare the company bankrupt.

Conclusion of case

- 30** How are liquidation and reorganisation cases formally concluded?

Reorganisation

The reorganisation must be completed pursuant to the time period specified in the plan. The court may extend the time period for implementation of the plan, order termination of business reorganisation, or place the debtor under absolute bankruptcy.

Liquidation

When the receiver has made final distribution of the assets of the debtor, or has ceased to take action under the composition, or when the bankrupt has no distributable assets, the court may or may not close the action. An order for closure releases the receiver from all liabilities up to the date of such order.

UNCITRAL Model Law

- 31** Is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency under consideration in your country? If so, what is the present status of this consideration?

No.

International cases

- 32** What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

Thailand is not a member of any treaty or convention for the recognition of foreign insolvencies. The receivership of assets under the Thai BA only pertains to the assets of the debtor within Thailand. The receivership of asset or bankruptcy action under foreign laws has no effect as to the assets of the debtor in Thailand.

Foreign creditors who are domiciled outside of Thailand can claim repayment of debts in the bankruptcy action upon their compliance of the following conditions:

- They must prove that creditors in Thailand are similarly entitled to claim for payment of debts in bankruptcy actions under the laws and before the courts of the countries of which they are nationals
- They must report the amount of the assets or distribution that they have received or are entitled to receive from the same debtor's estate located outside of Thailand, if any. If so, they must agree to deliver the assets or distribution from the debtor's said estate to be added to the debtor's estate in Thailand

Cross-border insolvency protocols and joint court hearings

- 33** In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Thailand has not entered into any cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries.

Pending legislation

- 34** Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

The BA was recently amended in June 2004. There is no pending legislation at present.

Developments

- 35** Please comment, if applicable, on any significant developments or recent decisions in your country involving the EU Regulation on Insolvency Proceedings.

Not applicable.

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