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Bankruptcy, Insolvency & Rehabilitation Proceedings in Thailand

ILN RESTRUCTURING & INSOLVENCY GROUP



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KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER THAI LAW

This paper has a goal to clarify the protections under Thai Bankruptcy Act, B.E.2483 (1940) and its amendments that may be granted by law or the court decision/order against the debtors, who declared that they are bankrupt or under the process of negotiation with creditor on an agreement on rehabilitation.

The law of Thailand regarding insolvency, bankruptcy and rehabilitation proceedings are stipulated and applied through only the Bankruptcy Act B.E. 2483 (1983) and its amendment No.10, B.E.2561 (2018).

The Comparison between the bankruptcy and rehabilitation under the Bankruptcy Act B.E. 2483 and its amendments

	Bankruptcy	Rehabilitation
The Person who is eligible to file the case/ petition with the Court	<ul style="list-style-type: none"> - Creditor - The debtor by its liquidator if after the completion of liquidation process, the assets of the company are less than the liabilities of the company. 	<ul style="list-style-type: none"> - Creditor/Debtor
The conditions for filing the petition	<ul style="list-style-type: none"> - Debtor is insolvent - The debtor is an individual person/ or juristic person - The debt amount is not less than <u>1 million THB for individual person</u>, or - The debt amount is not less than <u>2 million THB for Juristic Person</u> 	<ul style="list-style-type: none"> - The Debtor is insolvent - The debtor is a limited company/public company or any juristic which is specify in ministerial regulations - The debt amount is not less than <u>10 million THB</u> - a reasonable cause and prospect for the reorganisation of the debtor’s business (debtor must not be placed under absolute receivership) - Filing petition in good faith
The effect by the Court Order	Upon the Court issuing an absolute receivership order against the debtor, only the receiver has the authority to manage the business and collect all assets of the debtor for distribution to the eligible creditors who file their claims for repayment of debt within the time frame as specified by the law.	Upon the Court accepting the petition for rehabilitation, the automatic stay of the debtor under Section 90/ 12 shall be applied.
The Operation when entering the process/ The effect by the Court Order	The debtor shall file proposal for a composition in satisfaction of debts in the creditors meeting If there is no Proposal or any Approval for a composition in the meetings, the official receiver must report to the	In case of accepting the rehabilitation plan by the Court, the plan administrator shall operate the implementation of the plan which shall not exceed 5 years. The implementation of the plan shall be extended 2 times which shall not exceed 1 year per each extend.



	<p>Court and the Court shall have to order that the debtor is bankrupt. After 3 years from the order’s date, the order might be dismissed under some conditions specify by the law, for example, there is no further asset to be seized.</p>	<p>In the Case that the creditors meeting and the Court rejects the plan, Court will order to dismiss the rehabilitation order, or order the debtor in bankrupt.</p>
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The main difference between Bankruptcy and Rehabilitation is the existence of the business of the debtor and the repayment of debt to the creditors and the effect of the court’s order including the protection granted under the law.

The protection granted to the debtor against its creditors:

What kind of protection is granted? (e.g. the creditors may not enforce any court decision against the debtor’s assets etc.)

In case of bankruptcy, there is no protection for the debtor once the Court has the order to place the debtor under absolute receivership. According to the Bankruptcy Act B.E. 2483, only the receiver has the authority to manage the business or assets of the debtor for the purpose of collecting all the debtor’s assets and selling in public auction in order to share the net amount after deducting expenses and fees for all eligible creditors who file their claim for repayment of debt within the time frame as stipulated in the Bankruptcy Act.

Regarding rehabilitation under the Bankruptcy Act B.E. 2483, the business of the debtors shall be existed, the Plan preparer has the duty to prepare the rehabilitation plan while the Plan Administrator has the duty to implement the rehabilitation plan. In addition, once the Court orders accepting the rehabilitation petition for further inquiry, there are several protections for the debtor under Section 90/12 of the Bankruptcy Act B.E. 2483.

Section 90/12 of Thai Bankruptcy Act, B.E.2483 (1940) provides that subject to section 90/13

and section 90/14, as from the date of the Court’s order accepting the petition for consideration up to the date of the expiration of the period of time fixed for the implementation of the plan or the date of successful completion of the implementation of the plan or the date of the Court’s order dismissing the petition or striking the action out of the case-list or cancelling the business reorganization order or cancelling the business reorganization or the absolute receivership against the debtor in accordance with the provisions of this Chapter, then:

- (1) no action or application shall be brought before or filed with the Court for a judgment or an order dissolving the juristic person that is the debtor and the Court shall, if the action or application has been brought before it or filed with it, stay the trial of such case;
- (2) the Registrar shall not issue an order dissolving or effecting registration of the dissolution of the juristic person that is the debtor and such juristic person shall not be dissolved by any other means;
- (3) the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, shall not order revocation of a licence for the operation of business of the debtor or order the debtor to cease the operation of



business, unless upon permission by the Court receiving the petition;

- (4) no civil action shall be instituted against the debtor in connection with the debtor's property and no dispute in which the debtor may be liable or suffer loss shall be referred to arbitration for a decision if the obligation arose before the date of the Court's order approving the plan, and no bankruptcy action shall be instituted against the debtor, in the case where an action has previously been instituted or a dispute has previously been referred to arbitration for decision, then a trial shall be stayed, unless the Court receiving the petition orders otherwise;
- (5) a judgment creditor shall not have any execution undertaken against the debtor's property if the obligation to which the judgment relates arose before the date of the Court's order approving the plan. In the case where the execution has previously been undertaken, the Court shall stay such execution unless the Court receiving the petition orders otherwise or the execution has been completed before the Executing Officer became aware of the filing of the petition or the execution of the Court's judgment requiring the debtor's delivery of specific property has been completed prior to such date.

In the case where the property seized or attached is perishable or delay involves risks of loss or costs incurred will exceed the value of such property, the Executing Officer shall sell it by public auction or by any other reasonable means and set aside the proceeds. If the Court issues an order approving the plan, the Executing Officer shall deliver such proceeds to the plan

administrator for expending them as expenses. If the Court issues an order dismissing the petition or striking the action out of the case-list or cancelling the business reorganization order or cancelling the business reorganization, the Executing Officer shall pay such proceeds to the judgment creditor. But, if the Court issues an absolute receivership order against the debtor and the proceeds remain, the same shall further be delivered to the Receiver;

- (6) a secured creditor shall not exercise enforcement for payment of the debt against property given as security unless upon permission by the Court receiving the petition;
- (7) a creditor legally entitled to exercise self-help enforcement for payment of the debt shall not seize or sell the debtor's property;
- (8) an owner of the property which is essential for the operation of the debtor's business under a contract of hire-purchase, a contract of sale or any other contract carrying a condition or a time clause for a transfer of ownership or a contract of hire the agreed term of which has not yet expired shall not exercise the right to follow and recover the property in the possession of the debtor or any other person relying on the debtor's rights or institute an action for enforcement in connection with property and liabilities arising from such contract. If an action has previously been instituted, the Court shall stay its trial unless the Court receiving the petition orders otherwise or, after the date of the Court's business reorganization order, the debtor, the Receiver, the interim executive, the plan preparer, the plan administrator or the



interim plan administrator, as the case may be, commits, on two successive occasions, a default on the payment of hire-purchase remuneration, a price, remuneration for the use of the property or rent under the contract or commits a breach of any material part of the contract;

- (9) the debtor shall not make any disposal, distribution or transfer, grant a lease, make repayment of debt, create debts or perform any action having the effect of creating any encumbrance over the debtor's property except that it is an action necessary for the continuance of normal operation of the debtor's business, unless otherwise ordered by the Court accepting the petition;
- (10) with respect to orders issued by the Court as provisional measures for seizing or attaching the debtor's property or prohibiting any disposal, distribution or transfer thereof or putting the debtor's property into temporary receivership, being the property in existence prior to the date of the Court's order accepting the petition for consideration, the Court accepting such petition has the power to order suspension of the execution thereof or amendment or variation thereof in such manner as it deems appropriate. But, if the Court thereafter issues an order dismissing the petition or striking the action out of the case-list or cancelling the business reorganization, the Court shall issue an order in connection with such provision measures or temporary receivership order against the debtor as the Court deems appropriate;
- (11) any provider of such public utilities as electricity, water or telephone shall not suspend services supplied to the debtor unless upon permission by the Court

accepting the petition, or unless, after the date of the Court's business reorganization order, the debtor, the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, has failed to make two successive payments of charge accruing after the date of the Court's business reorganization order.

The provisions of paragraph one do not preclude operators of public utilities from filing with the Court accepting the petition an application for an order protecting the applicants' interests as the Court deems appropriate.

Any judgment or order of the Court or any arbitral award which is contrary to or inconsistent with the provisions of any sub-section of paragraph one is not binding upon the debtor.

Any issuance of an order by the Registrar of Partnerships and Companies, the Registrar of any juristic person concerned or the person having the powers and duties in connection with the juristic person that is the debtor, any entry into a juristic act or any payment of debts which is done in a manner contrary to or inconsistent with the provisions of any sub-section of paragraph one is void.

In conclusion, to protect the debtor's business from any creditors' actions. no action or application shall be brought before or filed with the Court for a judgment or an order dissolving the juristic person that is the debtor and the Court shall, if the action or application has been



brought before it or filed with it, stay the trial of such case, or a secured creditor shall not exercise enforcement for payment of the debt against property given as security unless upon permission by the Court receiving the petition or a creditor legally entitled to exercise self-help enforcement for payment of the debt shall not seize or sell the debtor's property and etc.

What is the extent of the protection? (e.g. it includes all the debtor's assets; Is it limited to several assets for which the debtor may ask for protection? Is it at the court's discretion to include any asset? etc.)

The extent of all debtors' asset protection is already prescribed by the law. There is no requirement for the debtor to ask the protection from the Court as there is an automatic stay under Section 90/12 as prescribed above, while there is no protection against the debtor's assets granted by the Court if the debtor is already placed under absolute receivership order and/or bankruptcy judgment.

Does the protection include only the debtor, or may it cover other persons as well (e.g. guarantors)?

The protection shall be applied only the debtors, it does not cover to the guarantors in accordance with Section 90/60

"Section 90/60. The plan approved by the Court binds the creditors who may make applications for repayment of debt in the business reorganisation and the creditors who are entitled to repayment of debt in the business reorganisation, in accordance with section 90/27.

The Court's order approving the plan does not have any effect of varying liabilities of persons who are the debtor's partners or bear joint liability together with the debtor or stand surety for or are in the same position as the surety for the debtor, in respect of the debts existing before the date of the Court's order approving the plan and does not have any effect of rendering such persons to be liable for the debts created under the plan as from the said date unless such persons, with evidence in writing, give consent thereto."

For how long is the protection granted?

Until the Court has the order to dismiss rehabilitation order.

Which creditors are bound by the protection?

It is bound to all creditors who are the eligible creditors on the date the Court issues the rehabilitation order.