

SECTION I - INSOLVENCY LAW REGIME

[Note: It would be helpful in this section if, where it is relevant to the answer, the relevant sections or articles of the insolvency law were identified]

I1. Underlying philosophy

a) What is the underlying philosophy of the insolvency law of this economy? (For example is it distributive, rehabilitative or penal?)

Bankruptcy law in Thailand is part of the body of commercial law. It is designed both to help a debtor to rehabilitate, if possible, through the reorganization provisions, as well as distribute the debtor's property between debtors. It attempts to achieve fairness for both debtor and creditors.

b) Are there elements of more than one philosophy present in the insolvency law of this economy?

Except for the concept in clause (a), Thai bankruptcy law also wants to help debtor to have chance releasing from their debt by compromise or cancellation by giving a chance to the debtor to continue their business and through re-organization proceedings for debtors in financial difficulties.

c) Briefly describe the relevant elements, and if applicable, any penal sanctions available.

Advantages for creditor

- Equality for all creditors or equal rank.
- Convenience and low expense for creditors.
- For following the properties better than in Civil case.

Advantages for debtor

- Helps honest debtor leave from bankruptcy such as compromise rule, deposition from bankruptcy, cancel from bankruptcy.
- Having criminal sanction for dishonest debtor.
- Limited right and duty of debtor such as debtor can not do in

business lonely, anything must appear in the view of receiver.

Advantages for public

- Protect for public, protect for general people in the damage of cheat from debtor such as declaration in newspaper and gazette that debtor was receivership.

Criminal sanctions of a fine or imprisonment are as follows:

- The debtor shall not leave the Kingdom, except with the written permission of the court or the receiver, and, if he changes his address, he must report the new address within a reasonable time in writing to the receiver.
- The debtor do not go to meeting of creditors.
- The debtor shall not assist to the utmost of his capacity in the realization of his asset.
- The debtor objects requiring the receiver to enter into any place of residence or business of the debtor to examine asset, seals, accounting ledgers, or documents of the debtor.
- The debtor shall not deliver all the asset, seals, accounting ledgers, and documents relating to his asset and business to the receiver.
- The debtor do not explanations regarding his business and asset to the receiver.
- The debtor removes, conceals, destroys, causes damage to or alter seals, accounting ledgers, or documents relating to his business or asset.

I2. Jurisdiction in insolvency matters

- a) In which judicial category of insolvency law classified in the legal system of this economy? (For example civil, commercial or administrative.)*

Insolvency law comes under the civil law classification in Thailand.

- b) Which Courts, tribunals or administrative bodies in this economy are competent to exercise jurisdiction in insolvency matters?*

The Civil Courts and the Provincial Courts are competent to exercise

jurisdiction in insolvency matters.

c) *Are any limitations placed on the jurisdiction of any of these bodies?*

The only limitations placed on the jurisdiction of the Court of Justice of Thailand is with regard to execution of judgment. Thai judgments are not recognized in other countries, nor will foreign judgments be recognized in Thailand. Although foreign judgments may be used in evidence, cases must be reinstigated in a court of justice in Thailand.

I3. Types of insolvency procedures

a) *What types of insolvency procedure are available in the legal system of this economy for the administration of corporate debtors in financial difficulty? (For example bankruptcy, liquidation (winding up), receivership, restructuring or other forms of administration.)*

There are three types of insolvency procedures available in the legal system of Thailand for the administration of corporate debtors in financial difficulty. The first type is the "straight" bankruptcy procedure. The receiver will administrate the debtor's business. The second type is the restructuring procedure under the bankruptcy legislation. The planner or the plan administrator will administrate the debtor's business. The third type is liquidation. During the liquidation process, the liquidator, once he has found that the company's assets shall not cover its liabilities, must file a petition to the court to order a bankruptcy. The law generally stipulates that liquidation shall be in accordance with applicable bankruptcy laws, as permissible. However, a person may not enter into a liquidation voluntarily under the CCC as the Bankruptcy law stipulates its procedures otherwise. In short, a debtor under a bankruptcy case must comply with the procedures under the Bankruptcy Act. Liquidation managed by the corporate liquidator

COMPARISON BETWEEN CCC & BANKRUPTCY ACT

<i>Liquidation under CCC</i>	<i>Bankruptcy Act</i>
-Initiated by an authorized liquidator	-Initiated by a creditor.

-Enter the case by a one-sided petition.	-Relevant parties shall be officially informed and involved.
-Liquidator must file a petition as soon as it becomes known that the assets will not cover liabilities.	-Timing depends on the petitioner(s).
-Liquidator must prove that the company's assets do not cover liabilities. Court's consideration is largely based on Finance & Account documents and the liquidator's persuasion.	-petitioner must prove that the debtor is insolvent; and there are no reasonable grounds that debtor might be able to repay its debts or other grounds that the debtor should not be placed under receivership. Debtor's situation, actions and other related circumstances will be taken into consideration.
-Debtor voluntarily consents to be placed in bankruptcy	-exposed to the disputes.
- Procedures and legal steps not specifically detailed.	-Procedures and legal steps are stipulated under the law.
- Liquidation managed by the corporate liquidator.	- Under Court control and if the debtor is placed under receivership, their business is controlled by receiver.

b) Briefly describe the main features of each type of insolvency procedure for corporate debtors: including, for example the manner in which each procedure is initiated and administered, and the aims of each procedure.

The main features for straight bankruptcy procedure is to place the debtor under absolute receivership in order to end the business operation of the debtor and to divide the debtor's assets.

The main feature for rehabilitation procedure is help a debtor who faces a liquidity problem by affording an opportunity to rehabilitate his business before being bankrupted.

The main feature for the liquidation procedure is that a debtor voluntarily consents to be placed in liquidation.

c) Identify the relevant legislation governing each type of insolvency procedure available for corporate debtors.

The legislation governing both types of bankruptcy proceedings available for corporate debtors is the Bankruptcy Act. The legislation governing the liquidation process is contained in the Civil & Commercial Code sections 1247 - 1273.

I4. Commencement of insolvency procedures

a) Is it usual or customary in respect of a corporate debtor which is insolvent to attempt to negotiate an informal administration before formal insolvency procedures are commenced?

It is usual in respect of an insolvent corporate debtor to attempt to negotiate with its creditors for an extension period for repayment of the debt if it is considered that there is no other choice. Where negotiations fail, the formal insolvency procedure may be commenced.

b) In relation to each type of insolvency procedure available in the legal system of this economy, who may commence the procedure? (For example the corporate debtor, secured creditors, unsecured creditors, directors, shareholders, the State.)

The Plaintiff of the straight bankruptcy procedure may be the secured or unsecured creditors or the liquidator of the corporate debtor after the liquidation process.

The persons who may commence the rehabilitation procedure are as follows:-

- (1) A creditor or several creditors whose debts in aggregate total an amount exceeds Baht Ten Million.
- (2) A debtor having the following qualifications:-
 - is a limited company or any juristic person as provided in the Ministerial Regulations;
 - is insolvent;
 - one or several creditors whose debts in aggregate total an amount exceeding Baht ten million, regardless of whether or not such debts are immediately due or become

due in the future.

- no order issued against it by the Court to place the assets in absolute custody.
- no order from the Court or Registrar issued against it or from any other causes to dissolve or revoke its registration or has not yet registered to dissolve it.

- (3) The Bank of Thailand, in case where the debtor is a commercial bank, finance company, finance and securities company or a credit foncier company.
- (4) The Office of the Securities and Exchange Commission, in case where the debtor is a securities company.
- (5) An insurance company, where the debtor under (2) above is a life or accident insurance company.
- (6) The government agencies empowered to oversee the debtor's business for debtors under (2) above.

(Bankruptcy Act (No.4) B.E. 2541 Article 90/4)

For the liquidation procedure, a resolution from the shareholders of the corporate to wind up the company is required. A liquidator will then be appointed. As soon as the appointment is made, the liquidator is the sole manager of the corporate business.

- c) On what basis may each type of insolvency procedure be commenced, or what requirements must be satisfied before the procedure may be commenced? (For example non-payment of debts; balance sheet/cash flow insolvency; trading losses; resolution by directors to enter insolvency procedure.)*

Legal prerequisites and requirements for a formal insolvency procedure to be commenced are:-

- (1) The debtor is insolvent;
- (2) The debtor who is an ordinary person is indebted to one or several entities amounting to not less than Baht fifty thousand, or the debtor who is a juristic person is indebted to one or several plaintiffs amounting to not less than Baht five hundred thousand; and

- (3) The said debt may be determined in a definite amount irrespective of whether it becomes due for payment immediately or at a future date.

(Bankruptcy Act B.E. 2483 Section 9)

Where the petition is filed by a secured creditor, the following conditions also apply:-

- (1) The creditor is not prohibited from the enforcement for the settlement of debts from the debtor's assets in excess of that placed as a security; and
- (2) The creditor must state in the plaint that if the debtor becomes bankrupt, he is willing to waive the security for the benefit of all creditors, or make an appraisal of the security in the plaint which, after deduction of the obligation due to him, is still in the deficit for the debtor who is an ordinary person in the amount not less than Baht fifty thousand or for debtor who is a juristic person in the amount not less than Baht five hundred thousand.

(Bankruptcy Act B.E. 2483 Section 10)

In general, the creditor is required to establish that the debtor is insolvent i.e. his assets do not cover his liabilities. In this matter, if there is undisclosed information about the assets and liabilities not known to the creditor, the debtor will be able to raise its defense based on one-sided information which cannot be properly verified by the creditor. Therefore, to avoid any difficulties during the Court inquiries in this matter, the presumptions as specified by law (see below) should be taken into consideration in order to expedite the initial proceedings and proceed with the details of the plaint. Normally, a petitioning creditor would conduct a search on the debtor or take formal action against the debtor to be in compliance with at least one of the prescribed legal presumptions. In most cases, issuance of formal notices under the highlighted clause 9 below is selected as it is the safest and least difficult way. Other alternatives may be selected upon an assessment of sufficient grounds but the formal notice method may be conducted concurrently. Please note the following available presumptions of insolvency:

- (1) If the debtor transfers assets or rights in management of his assets to other persons for the benefit of all his creditors whether such act is done within or without the Kingdom.
- (2) If the debtor transfers or delivers his assets with dishonest or fraudulent intent whether such act is done within or without the Kingdom.
- (3) If the debtor transfers his assets or creates any right over such asset which, if the debtor were a bankrupt, would be deemed as an act of preference whether such act is done within or without the Kingdom.
- (4) If the debtor does any of the following acts in order to delay payment of his debt, or in order to prevent a creditor from receiving payment of the debt:
 - a. leaves the Kingdom, or, having previously left, remains outside the Kingdom;
 - b. leaves the premises in which he has resided, or conceals himself in any premises, or absconds or leaves by other means, or closes his place of business;
 - c. removes assets out of the jurisdiction of the court;
 - d. consents to judgment ordering the payment of money which he should not pay.
- (5) If the debtor has had his assets attached under a writ of execution, or there is no asset of any kind capable of attachment for payment of the debt.
- (6) If the debtor declares to the court in any action that he cannot pay his debts.
- (7) If the debtor informs any of his creditors that he cannot pay his debts.
- (8) If the debtor submits to any two or more of his creditors a proposal for composition of his debts.
- (9) If the debtor 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.

(Bankruptcy Act B.E. 2483 Section 8)

The legal prerequisites and requirements for filing a rehabilitation petition are:--

- a debtor whose debts in aggregate to one or more creditor total an amount exceeding Baht ten million, regardless of whether or not such debts are immediately due or become due in the future.
- the name(s) and address(es) of the creditor(s) to whom the debtor owes in aggregate at least Baht 10 million;
- reasonable grounds and methods for reorganizing business operations;
- the name and qualifications of proposed planner;
- the consent of planner;
- a list of assets and liabilities (if the petitioner is the debtor).
- consent of the authorities where applicable as follows:-
 1. The Bank of Thailand, where the debtor is a commercial bank, finance company, finance and securities company or a credit foncier company.
 2. The Office of the Securities and Exchange Commission, where the debtor is a securities company.
 3. The Insurance Department, where the debtor is a casualty insurance company or a fire insurance company.
 4. The government agencies empowered to oversee the debtor's business government agency and in such case the debtor shall be in compliance with the provisions stipulated in the Ministerial Regulations.

(Bankruptcy Act (No.4) B.E. 2541 Articles 90/4, 90/6)

The liquidator will commence the case with the court on the above bankruptcy grounds for such corporate as soon as it becomes known to the liquidator that the assets will not cover liabilities. The liquidator must prove that the company's assets do not cover liabilities. The Court's consideration is largely based on balance sheet and accounting documents, and the liquidator's powers of persuasion.

(d) How is each type of insolvency procedure commenced? (For example by application to the Court, by administrative act, by written notice to the business organization.)

The straight bankruptcy procedure is commenced by a creditor

filing a plaint with the civil court or provincial court.

Rehabilitation procedures are commenced by the eligible petitioner filing a petition with a civil or provincial court in accordance with the debtor's domicile.

The liquidation procedure is commence by a corporate's liquidator filing a case with the court requesting the court to order the corporate debtor bankrupt.

- e) *What is the usual time period between the commencement of formal insolvency proceedings and the declaration or imposition of a formal administration on the corporate debtor?*

The usual time period between the commencement of formal insolvency proceedings and the declaration or imposition of a formal administration on the corporate debtor will be depended on whether or not a defence is mounted. If the Defendant does not defend itself in Court, it will take approximately 3-4 months for an absolute receivership order to be made against the Defendant. If the Defendant offers no defence, it will take approximately 1 year for the issuance of a final order.

- f) *How effective is the judicial or court system (or administrative system) in relation to the handling of formal insolvency proceedings?*

The court system in relation to the handling of formal insolvency proceedings is quite effective except for the procedural delays involved with the hearing of cases.

I5. Effect of insolvency procedures

- a) *In relation to each type of insolvency procedure available in the legal system of this economy, what is the effect on the corporate debtor, its constituent parts and its business relationships of initiation of the relevant insolvency procedure?*

(For example, how does initiation of the insolvency procedure affect:

- *the powers of management of the debtor;*
- *the interests of owners/shareholders of the debtor;*
- *contracts to which the debtor is a party;*
- *legal proceedings to which the organization is a party;*
- *remedies available to persons in contractual (non-debt) relationships with the debtor);*

The “Straight” Bankruptcy Procedure

There is an effect on the corporate debtor only when the court orders the debtor to be placed in receivership. In such a situation, the Receiver solely has the following powers:

1. to manage and dispose of the assets of the debtor, or do any necessary act to complete any pending business of the debtor;
2. to collect and receive money or asset to belong to the debtor, or which the debtor is entitled to receive from others;
3. to compromise, come to a settlement, file actions, or defend actions, relating to the assets of the debtor.

(Bankruptcy Act B.E. 2483 Sections 141-148)

When the court has ordered the debtor to be placed under receivership, it is prohibited for the debtor to do any act relating to its assets or business except by order or approval of the court, the Receiver, the administrator of the assets, or of a creditors' meeting. When a temporary receivership order is made, the receiver, with the assistance of the petitioning creditor, will have the power to manage the debtor's business.

The Receiver, once appointed, is required to join in all civil actions relating to the assets of the debtor that may be pending in court at the time when the court orders the debtor to be placed under receivership, and when the receiver applies by motion, the court is empowered to

order the cessation of the hearing of civil actions, or make any other order it may deem appropriate. Where the Receiver joins pending action on behalf of the debtor and such case is lost, the judgment creditor is entitled to file a claim for repayment of debt within 2 months from the date of final judgment for such action.

Any person who has suffered a loss because of the attachment of his assets which are in the possession of the debtor at the time the receivership order is made, because of the cancellation of any transfer of asset or any other act during the three months prior and subsequent to an application to adjudicate him as bankrupt, or because of the refusal to accept any asset or any right under a contract is subject to terms more onerous than the benefits receivable thereunder made by the Receiver, is entitled to file a claim for repayment of debt for the price of the goods, the original debt, or for any loss, as the case may be, within 2 months but such period shall be calculated starting from the date when such right to claim repayment accrued. If the dispute has been taken to court, the calculation shall be as from the date of final judgment for such action. Sections 91, 92 of Bankruptcy Act.

Rehabilitation Procedure

Where the court has accepted a petition for business reorganization under Article 90 of the Bankruptcy Act and the planner is appointed, the planner will have the power and duties in managing the business and assets of the debtor. If there is no planner first nominated, the power and duties of the debtor executive in managing the business and assets ceases. The court will appoint one or more persons or the debtor's executive in the interim to manage the business and assets of the debtor under the supervision of the receiver until a planner is appointed. For the period it is not possible to issue an order to appoint an interim executive, the receiver shall have the temporary power to manage the business and assets of the debtor. In respect of the supervision, the receiver determines the powers and duties including ordering the interim executives to prepare an explanation of the accounts, finance or any matters relating to the management of the business and assets or he may give orders to do or not to do any act he

thinks fit. Upon deeming it proper or upon a motion made by the receiver, the court shall be empowered to relieve the interim executive from his powers and duties. In such a case, the court may appoint a new interim executive to assume the office. If the court does not do so, the receiver shall have the temporary power to manage the business and assets of the debtor. (Section 90/20, of Bankruptcy Act)

Where the court orders a business reorganization but has not yet appointed a planner, all legal rights of the debtor's shareholders are suspended except the right to receive dividends, and the said rights shall be vested in the interim with the executive or the receiver, as the case may be, until a planner is appointed. (Section of Bankruptcy Act 90/21)

Upon acknowledgment of the order for a business reorganization, the debtor's executive shall deliver the assets, seal, accounting ledgers and documents relating to the assets, liabilities and business of the debtor to the interim executive or the receiver, as the case may be, as soon as possible. For this purpose, the interim executive or the receiver shall be empowered to call upon the possessor to deliver the asset, seal, accounting ledgers and documents mentioned above to him. The interim executive who is relieved, by order of the court, from his office, shall have the said duties. (Section 90/21 para. 3,4 of Bankruptcy Act)

b) If another insolvency procedure has already been initiated in relation to the corporate debtor, how does the initiation of a second procedure affect the first?

If no absolute receivership order has been made against that debtor prior to the initiation of a second insolvency procedure, the second procedure will not affect the first, and vice versa. Hence, it is possible to have concurrent insolvency proceedings.