

Thailand

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Legislation

1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

In Thailand, the Bankruptcy Act BE 2483 (AD 1940) as amended (BA) is the law governing bankruptcy matters. In the BA, there are also sections that directly deal with reorganisation matters. Bankruptcy and reorganisation procedural matters are stipulated in the BA; the Establishment of and Procedures for Bankruptcy Court Act BE 2542 (AD 1999) (EPB); and Regulations for Bankruptcy Cases BE 2549 (AD 2006). The test of insolvency is mainly whether a debtor has debt greater than his or her assets. In addition, under the BA, there are presumptions as to whether a debtor is insolvent.

Courts

2 What courts are involved in the insolvency process? Are there restrictions on the matters that the courts may deal with?

The Central Bankruptcy Court, Regional Bankruptcy Court and Supreme Court, Bankruptcy Division, are the specialised courts which have jurisdiction to adjudicate bankruptcy and reorganisation matters.

In bankruptcy and reorganisation proceedings, there are two levels of court. The Central Bankruptcy Court and Regional Bankruptcy Court are the courts of first instance. An appeal of either a judgment or order (or both) thereof can be made directly to the Supreme Court, Bankruptcy Division.

Excluded entities and excluded assets

3 What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?

According to section 7 of the BA, the Thai court of jurisdiction may order that an insolvent debtor be declared bankrupt if such debtor is domiciled in Thailand or operates its business in Thailand within one year prior to the date that such debtor files for bankruptcy. In addition, section 9 of the BA specifies that an entity can file for bankruptcy if certain conditions are met. The requirements for any entity to file for bankruptcy are almost the same except that a juristic person is required to have indebtedness with one or more creditors of not less than 2 million baht in total. Therefore, an entity, including a foreign entity, that meets the above requirements, may be declared bankrupt by the Thai court.

Currently, in reorganisation proceedings, only a debtor who is a limited company or public limited company can file for or be subject to involuntary reorganisation under the BA in accordance with the definition of debtor under section 90/1 of the BA. However, section 90/1 also opens the process to other juristic persons included in ministerial regulations. An interesting example is Credit Union Co-operative, which is included in the definition of 'debtor' in the Ministerial Regulation of the Ministry of Justice dated 5 August 2014 (published in the Government Gazette on 7 August 2014). Consequently, the Credit Union Co-operative entered into reorganisation proceedings and is now in the reorganisation plan process.

Excluded assets from insolvency proceedings are personal and necessary assets that the debtor, spouse and minor children reasonably require in accordance with their condition in life; and livestock, seeds, instruments

and items for use in the debtor's occupation, of a total value not exceeding 100,000 baht.

Public enterprises

4 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

There is no specific procedure in respect of the insolvency of a government-owned enterprise. If a government-owned enterprise enters into insolvency proceedings, it shall follow the same procedure as a private enterprise.

There is no special remedy for creditors of an insolvent public enterprise. Such creditors shall enjoy the same remedies as those of a private enterprise.

Protection for large financial institutions

5 Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

Currently, there is no legislation enacted specifically to deal with the financial difficulties of institutions that are considered 'too big to fail'. However, under the Financial Institution Business Act, prior to entering into reorganisation proceedings in respect of a debtor that is a commercial bank, a finance company or a credit foncier company, the Bank of Thailand may take control over the said financial institution. As such, the directors, officers and employees of the financial institution will be prohibited from conducting any further business of that financial institution unless authorised by the control committee. The control committee has the duty to undertake all business of the financial institution placed under control, including having the financial institution merged with or transferred to another financial institution when deemed appropriate. A similar control mechanism is applicable to insurance companies and security companies under the Life Insurance Act, Non-Life Insurance Act and Securities and Exchange Act.

Secured lending and credit (immoveables)

6 What principal types of security are taken on immoveable (real) property?

Under Thai law, a mortgage is the only security that can be taken on immoveable (real) property.

Secured lending and credit (moveables)

7 What principal types of security are taken on moveable (personal) property?

Under Thai law, in general practice, pledge and retention are the securities which can be taken on moveable (personal) property. Under section 6 of the BA, secured creditor means 'the creditor holding rights over the asset of the debtor in a mortgage, pledge or a right of retention, or a creditor possessing preferential rights in the nature of a pledgee.' However, there is currently no precedent case that defines creditors of the same nature as pledgees. Therefore, it can be deemed that pledge and retention are currently the principal types of security taken on moveable (personal) property.

Unsecured credit

8 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

In bankruptcy and reorganisation proceedings, since unsecured creditors do not have any right over the assets to be enforced for their sole benefit, the only means available for unsecured creditors to obtain the repayment of debts lies with their right to file an application for the repayment of debt. Subject to section 90/27 and section 91 of the BA, unsecured creditors are entitled to file an application for repayment of debt in both bankruptcy and reorganisation proceedings.

The procedure to prove the validity of such an application for the repayment of debt is not complicated. However, the duration of these proceedings may vary depending on the case's complications and the availability of the court docket. In practice, it could take up to three months for the official receiver to consider and make an order on the application for the repayment of debt.

There are measures provided under Thai law that prevent the debtor's transfer of assets. In bankruptcy proceedings, temporary receivership is available under section 17 of the BA and an interim injunction under section 254 of the Civil Procedure Code is applicable *mutatis mutandis* by virtue of section 14 of the EPB prior to the rendering of the court's absolute receivership order.

With regard to the application for the repayment of debt, there is no special procedure applied to foreign creditors as Thai law does not differentiate the debt repayment application process between Thai and foreign creditors. In bankruptcy proceedings, a creditor in a foreign country can file an application for the repayment of debt within four months from the publication of an absolute receivership order while the creditor in Thailand is limited to a two-month period for filing the same application.

Voluntary liquidations

9 What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Thai law does not allow voluntary bankruptcy to be commenced by the debtor, except in the case that a liquidator of a dissolved debtor files a bankruptcy case and such dissolved debtor has insufficient assets to settle all debts.

Involuntary liquidations

10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

Under section 9 of the BA, a creditor is eligible to file for bankruptcy against a debtor.

To do so, the insolvent debtor must be proved to be indebted to one or more creditors in the amount of at least 1 million baht in total if an individual or indebted to one or more creditors in the amount of at least 2 million baht in total if an entity.

Voluntary reorganisations

11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

An insolvent debtor owing a definite amount of not less than 10 million baht to one or more creditors is entitled to file a reorganisation petition in accordance with section 90/4 of the BA. Once the reorganisation petition is accepted by the court, certain activities involving the assets of the debtor will be subject to section 90/12 of the BA (see further details in question 15).

Involuntary reorganisations

12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

A single creditor, group of creditors, or the state agency authorised to supervise the business of the debtor as described in the BA, may file a reorganisation petition against the insolvent debtor if such insolvent debtor has a definite amount of debt of not less than 10 million baht. Once the reorganisation petition is accepted by the court, certain activities involving the assets of the debtor will be subject to section 90/12 of the BA (see further details in question 15).

Mandatory commencement of insolvency proceedings

13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?

There is no Thai law that requires directors to commence bankruptcy and reorganisation proceedings. Nevertheless, the board of directors has a duty to call for an extraordinary general meeting of shareholders when the company is significantly at loss. If they fail to do so, each director may be held criminally liable with a penalty of up to 20,000 baht under the Act on Offences Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations BE 2499 (AD 1956).

Companies are not prohibited from carrying on business while insolvent. However, in a case where the creditor has known that the company (debtor) is insolvent at the time and yet still allows it to create debt, such debt (excluding debts which the creditor allowed to be created so that the debtor's business can continue operations) may not be claimed for repayment if insolvency proceedings are subsequently commenced.

Doing business in reorganisations

14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given 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? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?

The debtor is allowed to continue operating its normal business during a reorganisation pursuant to section 90/12(9) of the BA. However, the powers and duties of the debtor's executive in managing the business and assets shall cease once the court has ordered business reorganisation and the court may appoint any person(s) or the debtor's former executive to be an interim executive until the plan preparer is appointed. The debtor's assets cannot be sold except in the normal course of business unless such sale of assets is approved by the court. The debtor is allowed to make payment to creditors who supply goods or services according to the normal and current terms and conditions of agreements. Any claims arising after the court's reorganisation order will not be subject to reorganisation proceedings, and if the debtor has incurred such obligations in the normal course of business and as required for the continuation of its operation, the debtor can pay such claims.

Creditors of debts created by the receiver or interim executive with a debt confirmation letter from a plan preparer and creditors of debts created by the plan preparer, plan administrator, interim plan administrator and receiver have the right to be repaid without having to file an application for repayment of debt for business reorganisation.

Under the BA, if the business reorganisation plan is successfully implemented and the court orders the termination of the reorganisation process, the debts of the creditors who supply goods and services after the court renders the reorganisation order (created by the plan preparer, plan administrator, interim plan administrator, or receiver) will be treated as a first-rank privileged debt. In the event that the business reorganisation plan fails and the court orders the absolute receivership of the debtor, the debts of the creditors who supply goods and services after the court renders the reorganisation order (created by the plan preparer, plan administrator, interim plan administrator, or receiver), will be treated at the rank of the expenses incurred by the receiver in the management of the assets of the debtor.

The creditors and the court have roles in supervising the debtor's business activities as the creditors are entitled to file a petition requesting the court to revoke any transaction in breach of section 90/12(9).

If the creditors approve the business reorganisation plan, they can be represented by a creditors' committee to be selected at a creditors' meeting. The creditors' committee will supervise the implementation of the plan by the plan administrator.

After the insolvency proceedings are commenced by or against the corporation, the directors and officers are not prohibited from exercising the powers in connection with the management of assets or business of the corporation. However, as prescribed by section 24 of the BA, once the court has ordered the debtor to be under receivership, the powers of the directors

in connection with their corporation's asset or business will cease and are, by virtue of law, transferred to the official receiver. Pursuant to section 826 of the CCC, the powers of the officers empowered by the directors to act as their agent shall also terminate once the debtor becomes bankrupt. Nonetheless, the officers (agents) are obligated to take all necessary steps to protect the interests entrusted to them until the representatives of the principle can protect such interests.

Stays of proceedings and moratoria

15 What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

There are proceedings similar to a stay (automatic stay) as stipulated in section 90/12 of the BA. An automatic stay permits the debtor to continue to conduct business during the implementation of reorganisation proceedings by suspending existing lawsuits brought by creditors and prohibiting civil claims or actions from being filed against the debtor. Creditors may seek permission from the bankruptcy court to file claims.

The BA does not specifically provide for the application of an automatic stay in a bankruptcy case. The pending case involving assets of the debtor under bankruptcy proceedings may be suspended at the court's discretion.

Post-filing credit

16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

In bankruptcy proceedings, when the court has ordered the debtor to go into receivership, the debtor is prohibited from carrying out any act relating to its assets or business, except those performed under the order or approval of the court, the official receiver, the administrator of the asset or of a creditors' meeting (as the case may be), as prescribed in the BA. Accordingly, the debtor is prohibited from incurring any additional debt, otherwise the transaction in breach will be void.

In reorganisation proceedings, the debtor is prohibited from undertaking certain activities during the term of automatic stay, such as incurring additional debt that is not in connection with the normal course of business, whether secured or unsecured. An automatic stay becomes effective on the date the court issues an order accepting the reorganisation petition.

Set-off and netting

17 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?

In bankruptcy proceedings, under section 102 of the BA, if a creditor who is entitled to claim for repayment of its debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the debt of the two parties are not the same, or are subject to conditions or terms, such debts may be offset against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

In reorganisation proceedings, under section 90/33, if the creditor who is entitled to apply for repayment of debt for reorganisation is indebted to the debtor at the time of issuance of the 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 reorganisation order.

Sale of assets

18 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

In bankruptcy proceedings, under section 24 of the BA, after the rendering of the court's receivership order, the debtor is prohibited from engaging in

any activity involving his assets, including sale of the assets. The official receiver is the only person permitted under the BA to sell the assets of the debtor. The sale of assets will be conducted through auction or other selling methods proved to be the most convenient and for the best interests of all creditors as stipulated in section 123 of the BA.

The claims and liabilities can be passed with assets depending on the terms and conditions of the sale.

In reorganisation proceedings, under section 90/12(9) of the BA, the debtor is also prohibited from selling the assets out of the ordinary course of business throughout the process, unless it is provided otherwise in the plan approved by the court. 'Stalking horse' bids and credit bidding are not specifically prescribed under Thai law.

Intellectual property assets in insolvencies

19 May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

There is no specific provision under the BA for the termination of IP usage or the extent of IP usage during the bankruptcy and reorganisation proceedings. Accordingly, the termination of IP usage or the extent of IP usage is governed by the terms of the agreement between the licensor and the licensee.

There is no provision under the BA prescribing the right to use the IP after the termination of the IP agreement.

Rejection and disclaimer of contracts in reorganisations

20 Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

Under section 90/41 bis of the BA, only the plan administrator shall have the power to reject an unfavourable contract as specified in the reorganisation plan. The rejection right must be exercised within two months of the date on which the court approves the plan. Whoever suffers damages therefrom will have the right to file an objection with the court within 14 days of becoming aware of such rejection. If the court reaffirms the rejection, whoever suffers damages therefrom shall be entitled to apply for the repayment of debt for such damages under reorganisation proceedings.

Once the court issues an order accepting the petition for business reorganisation, section 90/12 of the BA prohibits the creditors from commencing a civil case in respect of the assets against the debtor if the obligation arises before the day on which the court approves the plan. If a breach of contract occurs, the creditors can choose to take action as follows:

- if the breach occurs before the court issued the order to reorganise the business, creditors can file an application for debt repayment with the official receiver;
- if the breach occurs after the day on which the court orders the reorganisation of business but before the day on which the court approves the rehabilitation plan, the creditors can ask the court for permission to take action against the debtor in a civil case; or
- if the breach occurs after the day on which the court approves the rehabilitation plan, the creditors can take action against the debtor in a civil case without having to seek permission from the court.

Arbitration processes in insolvency cases

21 How frequently is arbitration used in insolvency proceedings? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?

Bankruptcy and reorganisation proceedings will be initiated and proceed only in the courts, not in arbitration proceedings. No insolvency disputes are resolved by arbitration.

Under the BA, no creditors, including the creditors who initiate the bankruptcy of the debtor, can initiate a new bankruptcy case against the debtor in court after the court renders the absolute receivership order. In civil cases and arbitration proceedings, the BA does not specifically prohibit creditors from initiating these cases or proceedings. In practice, however, after the court renders the absolute receivership order on the debtor, the official receiver may ask the court or tribunal to dispose of the pending civil cases or arbitration proceedings.

In reorganisation proceedings, all actions against the debtor are put on stay and the creditors are prohibited from initiating arbitration or court proceedings against the debtor unless such prohibition is not necessary for the reorganisation proceedings.

The court cannot direct the parties to submit the dispute to arbitration.

Successful reorganisations

22 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

Under section 90/42 of the BA, the reorganisation plan must contain at least the following significant features: the reasons for reorganising the business; details of assets, liabilities and encumbrances; and principles and methods for reorganisation.

The reorganisation plan must be approved by a resolution of the creditors' meeting. The BA provides a voting system whereby creditors are, according to section 90/42 bis, divided into the following groups or classes:

- secured creditors having a secured debt of not less than 15 per cent of the total debt for which a claim for repayment may be filed will be classed as one group. Other remaining secured creditors shall be classified in the same group;
- unsecured creditors may be classified in different groups. Unsecured creditors who hold the same or similar rights or benefits will be classified in the same group; and
- creditors that, under the law or contract, are entitled to receive payment only after other creditors have received payment in full.

The reorganisation plan must be approved by:

- special resolutions of the meetings of all groups of creditors; or
- a special resolution of the meeting of at least one group of creditors that is not a group of creditors that is deemed to have attended and voted to approve the reorganisation plan, provided that the aggregate amount of debt of creditors of all groups who voted to approve the reorganisation plan constitutes not less than 50 per cent of the total debt held by creditors of all groups who attended the meetings in person or by proxy and voted at the respective meetings.

In addition, the creditors' approval of the reorganisation plan must be confirmed by the relevant court. The reorganisation plan confirmed by the court will bind both the creditors that are not required to submit proofs of claims and those that must submit proofs of claims.

In practice, the reorganisation plan may contain a clause to release non-debtor parties from any liability arising out of the implementation of the plan. Nevertheless, any specification to limit the liability of non-debtor parties will not relieve them from the liability arising out of a wrongful act or gross negligence. Meanwhile, the reorganisation plan cannot release non-debtor parties from any liability arising prior to the reorganisation.

Expedited reorganisations

23 Do procedures exist for expedited reorganisations?

There is no expedited reorganisation under Thai law but, in practice, the debtor can reduce the time-consuming nature of certain stages of the reorganisation by having major creditors agree on the principles of the reorganisation plan prior to the application for reorganisation.

Unsuccessful reorganisations

24 How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

If the reorganisation plan is not approved by the creditors or is approved by the creditors but not confirmed by the court, the court will then cancel the reorganisation order. Upon a reorganisation cancellation order, the

automatic stay will end and the powers and duties in managing the debtor's business and assets will devolve to the debtor's executive, but any acts carried out by the receiver, interim executive, plan preparer, plan administrator or interim plan administrator before such order will not be affected. The debtor's shareholders will also again enjoy their normal legal rights. Moreover, the receiver, interim executive, plan preparer, plan administrator or interim plan administrator, as the case may be, must promptly hand over the assets, seals, accounting ledgers and documents relating to the assets and business operation to the debtor's executive.

If the reorganisation is not successfully implemented in accordance with the reorganisation plan and the maximum period prescribed under the BA has elapsed, the court will either render an absolute receivership order if the court deems that the debtor should be declared bankrupt, or render an order to terminate the reorganisation.

Insolvency processes

25 During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

In bankruptcy proceedings, certain notices are to be given to creditors:

- notice to convene the first creditors' meeting;
- notice to convene the creditors' meeting for the composition prior to or after being declared bankrupt; and
- notice of the court hearing for the consideration of the composition.

Certain information will be available to creditors or creditors' committees, for example, details of the composition and details of the debtor's estate and business. The official receiver has the duty to report to the court on the administration of the debtor's assets and the conduct of the bankrupt person.

Under Thai law, the estate is included in the assets of the debtor. Only the official receiver is empowered by the BA to pursue estate remedies (rights to claim repayment or demand the delivery of an asset) against third parties.

Under the BA, only the liability of the debtor can be released under the reorganisation plan. In addition, according to section 90/60 paragraph 2, the liability of the guarantors or the joint-debtors of the debtor cannot be released under the reorganisation plan.

Enforcement of estate's rights

26 If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

In bankruptcy proceedings, the official receiver is empowered by the BA to pursue the estate's remedies (rights to claim repayment or demand the delivery of an asset) against third parties.

In reorganisation proceedings, under section 90/38 of the BA, the planner, the plan administrator or the official receiver is entitled to submit a petition requesting the court to compel those persons who admit that they are indebted to the debtor or have assets of the debtor in their possession, to pay the debt or turn over those assets. In contrast, if such persons do not admit that they are indebted to the debtor or they have assets of the debtor in their possession, the planner or the plan administrator must notify the official receiver to proceed with any further actions in accordance with section 90/39 of the BA.

Creditor representation

27 What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

In bankruptcy proceedings, under section 37 of the BA, the creditors' meeting may pass a resolution to appoint a committee of creditors for the management of the debtor's assets as prescribed in the BA.

In reorganisation proceedings, under section 90/55 of the BA, the creditors' meeting may pass a resolution to appoint a committee of creditors to act on behalf of all creditors in monitoring the implementation of the plan.

In practice, the plan may specify that proper expenses be paid to the advisers of the creditors, and there have been cases in which the court approved reorganisation plans that contained the payment of proper expenses to the advisers of the creditors.

Insolvency of corporate groups

28 In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

Under Thai law, there is no procedure for combining the parent company and its subsidiaries, therefore, none of the assets and liabilities can be pooled for distribution purposes. The assets are not allowed under Thai law to be transferred from an administration in Thailand to an administration in a foreign country.

Claims and appeals

29 How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

In bankruptcy proceedings, in general, all creditors must file an application for the repayment of debt with the official receiver within two months of the date on which the court order appointing the official receiver is published in the government gazette (the period may be extended at the official receiver's discretion, in the event such creditor is domiciled outside Thailand, for a period not exceeding two months). If a creditor fails to file an application for the repayment of debt, except for limited exceptions (ie, tax claims), such creditor will not be entitled to receive its share of the bankruptcy proceeds.

The official receiver shall submit the applications for debt repayment of all creditors along with his or her opinion for the consideration of the court and whether the creditors will be granted repayment of the debt is at the court's discretion. If the creditors wish to object to the court order, they may appeal to the Supreme Court, Bankruptcy Division.

There is no specific provision under the BA that prescribes the transfer of claims. The transfer of claims is possible but subject to the discretion of the official receiver. The transfer of claims must be disclosed to the official receiver.

In reorganisation, all creditors must file an application for the repayment of debt within one month of the publication of the order for the appointment of the planner in the government gazette. If a creditor fails to file an application for the repayment of debt, it will not be entitled to receive payment under the plan and has no further recourse against the debtor, unless the reorganisation plan provides otherwise, or the court cancels the reorganisation order.

In reorganisation proceedings, the official receiver has a duty to approve the application for the repayment of debt, including the contingent or unliquidated amounts. Such contingent or unliquidated amounts will be determined by the official receiver based on evidence and the creditor's proof of claim. An interested person may appeal the decision of the official receiver for the consideration of the relevant court within 14 days.

In general, the transfer of claims in reorganisation proceedings is subject to the discretion of the official receiver or the court, depending on the stage of the consideration of the application for the repayment of debt.

Under Thai laws, a claim acquired at a discount can be enforced at its full face value.

In regard to interest calculation, in bankruptcy proceedings, interest incurred after the date on which the court orders receivership cannot be claimed pursuant to section 100 of the BA. In reorganisation proceedings, on the other hand, creditors are not prohibited from claiming interest incurred after the court orders the reorganisation of the debtor's business.

Modifying creditors' rights

30 May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Under the BA, the court is unable to change the rank (priority) of a creditor's claim prescribed in the BA.

Priority claims

31 Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Under Thai law, secured debt has priority over unsecured debt. For unsecured debt, repayment will be distributed in the following order:

- expenses of administering the debtor's estate;
- expenses incurred by the receiver in managing the debtor's assets;
- funeral expenses of a deceased debtor appropriate to his or her status;
- fees incurred in collecting assets;
- fees of the petitioning creditor and counsel's fee, as the court or the receiver may prescribe;
- taxes which have become due for payment within the six months prior to the order for receivership; and
- other debts.

Employment-related liabilities in restructurings

32 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Normal employee claims (eg, severance pay) will arise if the employment is terminated during the reorganisation proceedings. The procedure for termination during the reorganisation proceedings is then in accordance with Thai labour law. The number of employees being terminated during the reorganisation or the cessation of the business operations is not cause for increasing claims under Thai law. Also, the employee pension plan or scheme does not have any priority in bankruptcy or reorganisation proceedings in Thailand.

Pension claims

33 What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

Under Thai law, there is no specific remedy for pension-related claims against employers in insolvency proceedings. Employees, along with other creditors, are required to file applications for the repayment of debt with the official receiver within two months of the date on which the court order appointing the official receiver is published in the government gazette. This period of two months may be extended at the official receiver's discretion in the event that any creditors are domiciled outside Thailand for a period of up to two months. No priorities are attached to such claims.

Environmental problems and liabilities

34 In insolvency proceedings where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Before the court orders the debtor to be under receivership, the directors are the persons responsible for controlling an environmental problem and for remediating the damage.

On the other hand, when the court has ordered the debtor to be under receivership, section 24 of the BA prohibits the debtor from taking action in relation to his or her assets and business. Rather, pursuant to section 22 of the BA, the official receiver is entitled to carry out any necessary act to complete any pending business of the debtor. As such, if environmental problems, or any other circumstances in which the debtor is obligated by law to perform certain actions occur, the official receiver has the authority to control the problem and to remediate the damage caused. The liability to compensate for the damages incurred will be imposed on the debtor.

Liabilities that survive insolvency proceedings

35 Do any liabilities of a debtor survive an insolvency or a reorganisation?

In bankruptcy proceedings, the liabilities of the debtor will survive in two cases: discharge from and termination of the bankruptcy.

In the case of discharge from the bankruptcy, there are two types of discharge: discharge from bankruptcy according to a court order and discharge from bankruptcy after the lapse of a three-year period as prescribed in the BA. An order of discharge from bankruptcy will not relieve the debtor from debts related to tax or land tax and debts that have arisen through the dishonesty or fraud of the bankrupt person or debts for which creditors have not filed claims owing to dishonesty or fraud to which the bankrupt person is a party.

If the bankruptcy is terminated by the court due to the creditors' failure to cooperate with the official receiver, the debtor will not be adjudicated bankrupt and will not be relieved from its liabilities.

In reorganisation proceedings, the debts incurred prior to the rendering of the court reorganisation order, which had been applied for, will be released after the implementation of the plan. After the rendering of the order to terminate the reorganisation, the debtor will be freed from all debt repayment that could be applied for in reorganisation proceedings. However, if the court revokes the reorganisation proceedings, all remaining debts that have not yet been repaid will remain.

Distributions

36 How and when are distributions made to creditors in liquidations and reorganisations?

In bankruptcy proceedings, once the assets of the debtor are sold, distributions will be made to the creditors who have been granted the court's final order to receive repayment of debt.

In reorganisation proceedings, distributions will be made according to the reorganisation plan approved by the court.

Transactions that may be annulled

37 What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

Under the BA, transfers involving assets of a reorganised company can be voided by court order.

Upon the written petition of the planner, a plan administrator or the official receiver, the court may order the cancellation and void the following transfers:

- a transfer of assets or transactions (or both) involving assets of the debtor carried out with the debtor's knowledge that it will prejudice creditors (except in the event the relevant beneficiary is not aware that such act or transaction would prejudice the debtor's creditors) (fraudulent transfer); or
- a transfer of the debtor's assets that intentionally provides preference to one or more of its creditors over other creditors, which is made in the three-month period prior to the commencement of proceedings under the BA or, in the event the creditors granted such preference are linked in some way to the debtor, within one year prior to the commencement of such proceedings (preferential transfer).

The BA provides that the following events, both in bankruptcy and reorganisation cases, invoke the presumption that the debtor and the beneficiary are aware that such a transfer or act would prejudice the debtor's creditors, and thus is a fraudulent transfer: the relevant transfer or act was made in the year before the filing of a bankruptcy petition or reorganisation petition, as the case may be; or the transfer was gratuitous or a transfer from which the debtor received an unreasonably small amount.

Proceedings to annul transactions

38 Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

Please see question 36.

Directors and officers

39 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Under Thai law, the liability of the directors and officers is separate from the liability of the company.

Groups of companies

40 In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

Currently, under Thai law, there are two types of company: private limited companies and public limited companies. The liability of shareholders in both legal entities is limited only to the amount, if any, unpaid on the shares that are subscribed by them. Under Thai jurisdiction, the doctrine of separate legal entity is strictly upheld. Hence, a parent or affiliated corporation can be held responsible for the liabilities of subsidiaries or affiliates only in the event that such parent or affiliated corporation has personally guaranteed the entity's debts or where it has made itself a co-debtor with its subsidiaries or affiliates.

Insider claims

41 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

Under the BA, an 'insider' is defined as, *inter alia*, a director, a shareholder holding more than 5 per cent of the total number of the issued shares of the debtor's business, and their spouses and minor children. 'Non-arm's length creditors' are not defined in the BA.

Under Thai law, there is no specific restriction barring insiders or non-arm's length creditors from initiating insolvency claims.

Creditors' enforcement

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

No, there is no process by which some or all of the assets of a business may be seized outside of court proceedings. However, secured creditors naturally have rights over the assets for which security is afforded to them by the debtor prior to the order of receivership of such debtor's asset, and need not file a claim for a repayment of debt provided that the secured creditor allows the official receiver to inspect such assets.

Corporate procedures

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

The liquidation of a company is governed by the Civil and Commercial Code (CCC) and the BA. If the company wishes to enter a liquidation in a normal situation, the company must call a shareholders' meeting and appoint a liquidator to settle the affairs of the company, to pay its debt and distribute its assets. In addition, under section 1266 of the CCC and section 88 of the BA, if the liquidator of the company finds that after the whole of the contributions or shares has been paid up the assets are insufficient to meet the liabilities, the liquidator must apply at once to the court to have the company declared bankrupt.

Conclusion of case

44 How are liquidation and reorganisation cases formally concluded?

Bankruptcy proceedings are concluded according to section 133 of the BA. Once the official receiver has made the final distribution of the assets of the debtor, or has ceased to take action under a composition, or when the debtor has no distributable assets, the receiver makes a report of the business and accounts for receipts and expenditures in the action for submission to the court and requests a court order for closure of the action.

Reorganisation proceedings are concluded according to section 90/70 of the BA if the debtor's executive, plan administrator, interim plan

Update and trends

An amendment to the BA was published in the Government Gazette on 20 August 2015 and will apply to bankruptcy cases filed after the amendment comes into force. Bankruptcy cases filed to the court before this amended BA comes into force and still pending in the court or pending the action of the official receiver will follow the process of the former BA.

Only the sections regarding bankruptcy have been amended. There has been no amendment to the sections regarding reorganisation. In addition, the amendments do not affect the core concepts of Thai bankruptcy law. The amendments only aim to facilitate compliance with bankruptcy proceedings.

One important component of the Thai bankruptcy and reorganisation law is the reorganisation of small and medium-sized enterprises (SMEs). The purpose of the amendment is to facilitate the reorganisation of an insolvent SME in order to avoid bankruptcy status. The conditions of the SME reorganisation process are (1) the SME shall be registered with the Office of SME Promotion (OSMEP), (2) the debtor is indebted to one or more creditors in an amount of not less than 3 million baht, and (3) in the case of a limited company, the debtor is indebted to one or more creditors in an amount of not less than 10 million baht. Currently, the draft amendment to the BA regarding the reorganisation of SMEs has been approved by the Cabinet and is now under the consideration of the legislators.

administrator, or the official receiver, as the case may be, finds the reorganisation of the business has been successfully completed pursuant to the plan. He or she must promptly report this to the court and request the court to order the termination of the reorganisation. If the court views that the company has successfully implemented the plan, the court will render the order to terminate the reorganisation.

International cases

- 45 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? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?**

With respect to insolvency proceedings, Thailand follows the territoriality principle (as opposed to the universality principle). Foreign judgments or orders with respect to insolvency proceedings in other countries are not recognised under Thai law. Under section 178 of the BA, foreign creditors

who are domiciled outside the kingdom can claim for repayment of debts in a bankruptcy action upon compliance with certain conditions. Thailand is not a signatory to any treaties on international insolvency or on the recognition of foreign judgments. Thailand has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.

COMI

- 46 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?**

Thai courts do not recognise the COMI but rather regard each debtor company as a separate entity from its group of companies. To determine jurisdiction, Thai courts consider whether the debtor is domiciled in Thailand, or operates business therein, whether on its own or by representative, at the time an application is made to adjudge such debtor bankrupt, or within a period of one year prior to that, as prescribed by section 7 of the BA. If this appears to be the case, the debtor can be adjudged bankrupt by Thai courts, which will only have jurisdiction over assets of the debtor that are situated within Thailand, pursuant to section 177 of the BA.

Cross-border cooperation

- 47 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?**

Cross-border cooperation is not provided for under Thai law. Thai courts do not recognise foreign proceedings. The receivership of an asset or a bankruptcy action under the law of another country has no effect on the assets of a debtor in Thailand according to section 177 of the BA.

Cross-border insolvency protocols and joint court hearings

- 48 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?**

Cross-border insolvency protocols and joint court hearings are not provided for under Thai law.



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THAILAND	Applicable insolvency law, reorganisations: liquidations
	Bankruptcy Act BE 2483 (AD 1940). Bankruptcy Court Act BE 2542 (AD 1999). Regulations for Bankruptcy Cases BE 2549 (AD 2006).
	Customary kinds of security devices on immoveables
	Mortgage.
	Customary kinds of security devices on moveables
	Pledge and retention.
	Stays of proceedings in reorganisations/liquidations
	Automatic stay is available only in reorganisation under section 90/12 of the Bankruptcy Act BE 2483 (AD 1940).
	Duties of the insolvency administrator
	In bankruptcy, the official receiver must gather the assets of the debtor and distribute them among the creditors. In reorganisation, the plan administrator plays the said role in compliance with the reorganisation plan.
	Set-off and post-filing credit
	Creditors can set-off debts, unless the creditor's right of claim against the debtor is accrued after the court order of receivership or after the court order of reorganisation. Upon the issuance of the court order of receivership, a debtor is prohibited from carrying out any acts relating to the asset, or the business, except by order or approval of the court, the official receiver, the administrator of the asset, or of a creditors' meeting (as the case may be). Otherwise, the transaction will be void. Once the court orders acceptance of the reorganisation petition, the debtor is prohibited from undertaking certain activities during the term of automatic stay.
	Creditor claims and appeals
	The application for repayment of debt is submitted to the official receiver. In bankruptcy proceedings, the appeal of the court order with respect of the repayment of debt is made to the Supreme Court, Bankruptcy Division. In reorganisation proceedings, the appeal of the official receiver's order with respect of the repayment of debt is made to the court.
	Priority claims
	Bankruptcy: Official receiver's fees, court fees and taxes due for payment within six months prior to the bankruptcy order; secured creditors with regard to secured assets; and employees. Reorganisation: In accordance with the plan, but if a priority creditor is treated other than in accordance with the normal distribution rules, that creditor must give its consent; if the reorganisation order is revoked and the debtor is declared bankrupt, debts incurred by the official receiver, planner and plan administrator have priority equal to the expenses of the official receiver in bankruptcy.
Major kinds of voidable transactions	
Fraudulent transfer and preferential transfer.	
Operating and financing during reorganisations	
Operating and financing during reorganisation which is conducted in the ordinary course of business can be done under the Bankruptcy Act BE 2483 (AD 1940).	
International cooperation and communication	
None at present.	
Liabilities of directors and officers	
The liability of the directors and officers is separate from the liability of the company.	
Pending legislation	
None at present.	