

Restructuring and Insolvency in Thailand: overview

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FORMS OF SECURITY

1. What are the most common forms of security granted over immovable and movable property? What formalities must the security documents, the secured creditor or the debtor comply with? What is the effect of non-compliance with these formalities?

Immovable property

Common forms of security and formalities. The only form of security granted over immovable property is a mortgage.

A contract of mortgage must (*sections 704, 708 and 714, Civil and Commercial Code of Thailand (CCC)*):

- Specify the property mortgaged.
- Contain either a fixed and certain sum, or a maximum amount in Thai Baht (THB), for which the mortgaged property is assigned as security.
- Be made in writing and registered by the competent official.

The mortgage agreement must be in writing and contain the particulars listed above. For immovable property that has title documents (for example, land), the competent official will note the mortgage on the title documents on registration of the mortgage.

Effects of non-compliance. Non-compliance with the mortgage agreement formalities will render the agreement void. In this event, a creditor will not have secured rights over the assigned property.

Movable property

Common forms of security and formalities. The most common form of security granted over movable property is a pledge.

In general, a pledge is created and completed when a pledgor delivers to a pledgee (or an agreed third person) a property as security for the performance of an obligation (*section 747, CCC*). There is no legal requirement to record a pledge agreement in writing or to agree on details such as the value of the item or duration of the agreement. The pledged property is considered to be security for the obligation as well as interest, compensation in case of non-performance of the obligation, cost of enforcement of the pledge, expenses for the preservation of the pledged property and compensation for injury caused by non-apparent defects of the pledged property (*section 748, CCC*).

Some types of movable property require further formalities:

- In the case that the pledged property is a right represented by a written instrument, the pledge is void unless that instrument is delivered to the pledgee and the pledge is notified in writing to the debtor of the right (*section 750, CCC*).

- In the case that the pledged property is an instrument to order, that pledge cannot be set up against third persons unless its creation is endorsed upon the instrument. No notification to the debtor under the instrument is necessary (*section 750, CCC*).
- In the case that the pledged property is an instrument issued to a named person and not transferable by endorsement, the pledge must be stated on that instrument, and cannot be set up against the debtor under that instrument or third persons, unless it is notified to the debtor (*section 751, CCC*).
- In the case that the pledge property is a named certificate for share or debenture, the pledge cannot be set up against the company or other third persons unless the creation of the pledge is entered in the company's book (*section 752, CCC*).

Effects of non-compliance. Non-compliance with the pledge formalities renders the agreement unenforceable. In this event, the creditor will not be considered a secured creditor of the movable property.

CREDITOR AND CONTRIBUTORY RANKING

2. Where do creditors and contributories rank on a debtor's insolvency?

In a bankruptcy proceeding, secured debts are considered to be a higher priority than unsecured debts, since a secured creditor will continue to hold rights over the security. Proceeds from the sale of the security will be allocated first to the secured creditors. Remaining proceeds will go to the bankruptcy estate to be distributed among other creditors.

Expenses and unsecured debts are to be paid in the following order:

- Expenses of administration of a deceased debtor's estate.
- Expenses of the receiver in managing the debtor's assets.
- Funeral expenses of a deceased debtor proper to his status.
- Fees 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 six months prior to the order for receivership of the assets, and wages that employees have the right to receive prior to the order for receivership of the assets for work performed for the debtor who is an employer.
- Other debts.

In the event that the money is insufficient to pay the debt in any of the above categories in full, creditors within such category will be paid *pari passu*, proportionally without preference (*section 130, Bankruptcy Act, B.E.2483 (A.D.1940)*, (BA)).

UNPAID DEBTS AND RECOVERY

3. Can trade creditors use any mechanisms to secure unpaid debts? Are there any legal or practical limits on the operation of these mechanisms?

There is no specific provision that grants trade creditors a particular mechanism to secure unpaid debts. The creditors' debts can only be paid under a restructuring or bankruptcy procedure or by set-off (see *Question 4*).

4. Can creditors invoke any procedures (other than the formal rescue or insolvency procedures described in *Questions 6 and 7*) to recover their debt? Is there a mandatory set-off of mutual debts on insolvency?

In a bankruptcy and reorganisation proceeding, some creditors do not have to be involved in the procedure for their debts to be paid-off, since mutual debts can be set-off in a bankruptcy and reorganisation case as follows:

- In a bankruptcy proceeding, if a creditor entitled to claim for repayment of its debt is indebted to the debtor when the court issues the order placing the assets under receivership, these debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset (*section 102, BA*). This can occur even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time.
- In a reorganisation proceeding, if a creditor entitled to apply for repayment of debt for business reorganisation is indebted to the debtor when the business reorganisation order is issued, that creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues the business reorganisation order (*section 90/33, BA*).

A set-off is not mandatory.

STATE SUPPORT

5. Is state support for distressed businesses available?

There are special laws governing important businesses which face financial difficulties. For example, under the Financial Institution Business Act, B.E.2551 (A.D.2008), prior to entering into reorganisation proceedings, the Bank of Thailand can take control of a financial institution in order to resolve its financial challenges where that financial institution is:

- A commercial bank.
- A finance company.
- A real estate credit institution (*crédit foncier*).

A similar mechanism is also available for:

- Insurance companies (under the Life Insurance Act, B.E.2535 (A.D.1992) and the Non-Life Insurance Act, B.E.2535 (A.D.1992)).
- Security companies (under the Securities and Exchange Act, B.E.2535 (A.D.1992)).

RESCUE AND INSOLVENCY PROCEDURES

6. What are the main rescue/reorganisation procedures in your jurisdiction?

Business reorganisation

Objective. In Thailand, the main reorganisation procedure is a business reorganisation. A business reorganisation aims to resolve the financial difficulties of indebted companies by allowing those companies to continue engaging in their businesses and helping creditors to be fairly repaid.

The main objective of the business reorganisation is to maintain the profitability and value of an indebted company in order to allow it to gradually pay-off its debts while avoiding bankruptcy and liquidation.

Initiation. The creditor (one or more creditors with a definite amount of debt of not less than THB10 million), or debtor, or government agency authorised to supervise the business of the debtor can file a petition for reorganisation of the debtor's business (*sections 90/2, 90/3 and 90/4, BA*).

Under Thai law, neither debtors nor creditors, or the agency authorised to supervise the debtor's business, has an obligation to initiate a reorganisation proceeding.

Substantive tests. After the petition for reorganisation of the debtor's business has been filed, the court will issue an order accepting the petition if it appears to the court that (*sections 90/3, 90/5 and 90/10, BA*):

- The debtor is insolvent.
- The debtor is indebted to one creditor or more altogether for a definite amount of not less than THB10 million.
- There are reasonable grounds to believe, and a positive prospect to expect, that the business of the debtor can be reorganised.
- The debtor is not subject to absolute receivership or dissolution.

Consent and approvals. The process of approval of a reorganisation proceeding can be roughly divided into the following five phases:

- **Phase one.** Consideration by the court to issue an order accepting a petition for reorganisation of the debtor's business (*sections 90/3 and 90/6, BA*).
- **Phase two.** An inquiry by the court to either issue an order for a business reorganisation or dismiss the petition for reorganisation. When deciding whether to issue an order for reorganisation of the debtor's business, the court will determine the facts according to the substantive tests of a reorganisation proceeding. If there are reasonable grounds for rehabilitating the business, and the petitioner has filed the petition in good faith, the court will issue the order for business reorganisation. Otherwise, the court will dismiss the petition.

However, if no person objects to the petition, the court has the discretion to cancel the inquiry and then order a business reorganisation (*section 90/10, BA*).

- **Phase three.** The appointment of the business reorganisation plan preparer, approved by the creditors and the court (*section 90/17, BA*). The court may appoint the person nominated by the petitioner to be the plan preparer. However, in the case that the court finds that the person nominated by the petitioner is not suitable to be the plan preparer, or the debtor or objecting creditor nominates another person, the court will issue an order to the receiver to call a first creditors' meeting in order to consider which person should be elected as the plan preparer.

In the first creditors' meeting, where the debtor has not proposed a plan preparer, a resolution electing the plan preparer will be passed by the creditors whose debts constitute the majority amount and who cast their votes on the resolution.

However, where the debtor has proposed a plan preparer, then that plan preparer will prepare the plan, unless the creditors whose debts constitute not less than two-thirds of the total debts have cast their votes on a resolution deciding that another person will be the plan preparer.

If the plan preparer is elected in the first creditors' meeting and the court approves that election, the court will appoint the elected person to be the plan preparer. If the court disapproves of the appointment, it will order the receiver to call a second creditors' meeting in order to elect a plan preparer, who is nominated by the creditors or the debtor.

If the first creditor's meeting is unable to elect the plan preparer, the receiver must call another creditors' meeting to elect the plan preparer, unless the court exercises its discretion to cancel the business reorganisation order.

If the second creditors' meeting successfully elects the plan preparer, the court will appoint that person as the plan preparer. However, in the case that there are reasonable grounds to not appoint the persons elected by the meeting to be the plan preparer, or the meeting is unable to elect the plan preparer, the court can repeal its order for the business reorganisation. The plan preparer (where appointed) will then draft the business reorganisation plan.

- **Phase four.** The holding of a creditors' meeting to discuss and approve the business reorganisation plan (*section 90/46, BA*). The plan must be approved by a special resolution of the creditors' meeting consisting of either:

- each and every group of creditors; or
- at least one group of the creditors, where the total debt of the creditors who have approved the plan at the meeting of all of the creditor groups is not less than 50%.

If the creditors do not pass a resolution accepting the plan, or do not pass any resolution, or the creditors do not attend the meeting, the court will issue an order cancelling the business reorganisation order.

The reorganisation plan must include classification of the creditors, which must be done as follows (*section 90/42 bis*):

- each secured creditor with a secured debt of 15% or more of the total indebtedness will each be classed as a group;
- secured creditors not classified under the first point above will be classed as a group;
- unsecured creditors can be classified into several groups (however, unsecured creditors whose claims or interest are identical or similar in material aspects can be the same group);
- creditors who by law or by contract have the right to receive repayment, only after the other creditors have received repayment in full, will comprise one group.

- **Phase five.** If the creditors have passed a resolution accepting the plan, the court will consider the plan and will issue an order approving the plan after determining that (*sections 90/48 and 90/58, BA*):

- the plan contains all required items;
- the rights of the creditors within the same group are treated equally, and the proposals for repayment of debt under the plan are in accordance with the sequence stipulated by the law regarding the distribution of assets in a bankruptcy case (except where those creditors have given their consent for another arrangement);
- when the plan has been successfully implemented, creditors will receive debt repayments in amounts that are not less than would be the position were the court to adjudge the debtor as bankrupt.

After the court has approved the plan, if it becomes necessary to revise the plan in order to accomplish the business reorganisation, the plan can be revised upon the approval of the creditors' meeting and the court.

Supervision and control. Before the court order for business reorganisation is issued, the debtor is allowed to manage its own business, provided that it does not dispose of, distribute, transfer, let, pay debt, create debt or do any act which creates encumbrance over its asset, except where such act is essential to the normal operations of the debtor.

After the issuance of that order, an interim executive (if any) will be in charge of the debtor's business until the plan preparer is appointed. Finally, when the court approves the business reorganisation plan, the rights and duties of the plan preparer will immediately pass to the plan administrator. In the event that there is a cause which temporarily prevents the plan administrator from carrying out its duties, or during the time that the plan administrator has been removed from his position and the court has not yet appointed a new plan administrator, the court will order the appointment of any person or persons to temporarily serve as an interim plan administrator. If it is not possible to appoint an interim plan administrator, the receiver will be the interim plan administrator (*sections 90/12(9), 90/24, 90/59 and 90/69, BA*).

Protection from creditors. In a business reorganisation, the debtor is protected from its creditors starting from the day on which the court issues an order accepting the petition for a business reorganisation under the following provisions (*section 90/12, BA*):

- The creditors cannot bring an action or petition to the court for adjudication or for an order to dissolve the legal entity that is the debtor.
- The creditors cannot take any action against the debtor in a civil case in respect of the debtor's assets or submit any dispute to arbitration if the debt arose before the day on which the court approves the plan, nor can they take action against the debtor in a bankruptcy case.
- Judgment creditors cannot carry out the execution of a judgment over the assets of the debtor if the debt contained in the judgment arose before the day on which the court approves the business reorganisation plan.
- Secured creditors cannot enforce the payment of debt against the assets which are secured.
- Those creditors who can legally enforce payment of their debt themselves cannot seize or sell the debtor's assets.
- Those creditors who are owners of the material assets for the debtor's business operation under a hire-purchase agreement, sales agreement or other agreement in which there is a condition or a time clause for transferring the ownership, or a lease agreement which has not yet expired, cannot:
 - pursue and repossess the assets in the debtor's possession (or the possession of another person who relies on the debtor's rights).
 - commence an enforcement action for the original hire-purchase, sales or other agreement.
- Those creditors who are business operators of public utilities cannot suspend utilities services supplied to the debtor.

However, there is no legal provision governing the termination of contracts during a reorganisation proceeding. Consequently, these matters are governed by the terms of the agreement between the parties.

Length of procedure. A reorganisation proceeding generally takes:

- Around eight months to one year from initiation to the date of issuance of a court order approving the plan.
- No more than five years for implementation of the plan.

Conclusion. In order to conclude the reorganisation procedure, the debtor's executive, plan administrator, interim plan administrator or receiver, who confirms that the reorganisation of the business has been successfully completed under to the plan, will promptly inform the court and ask the court to order the termination of the business reorganisation. The court will schedule a hearing. If it is found that the business reorganisation has been successfully completed under to the plan, the court will order the termination of the business reorganisation without delay (*section 90/70, BA*).

When the business reorganisation is terminated, the debtor, the creditors and other parties are affected as follows:

- **Debtor and creditors.** The debtor can continue its business as normal and will be free from all debts occurring prior to the court ordered business reorganisation, except for debts owed to eligible creditors who have applied for repayment in the business reorganisation (*section 90/75, BA*).
- **Debtor's executive.** The debtor's executive will again have the authority to manage the debtor's business operations and assets (*section 90/75, BA*).
- **Debtor's shareholders.** The debtor's shareholders will resume enjoying their legal rights (*section 90/75, BA*).
- **Debtor's employees and trading partners.** Although there are no specific provisions concerning how the debtor's employees and trading partners are affected by the termination of the business reorganisation, since the reorganisation procedure never causes the debtor's business to cease to operate, the debtor's employees and trading partners are not affected by the initiation or termination of the reorganisation procedure.

7. What are the main insolvency procedures in your jurisdiction?

Bankruptcy

Objective. In Thailand, the main insolvency procedure is bankruptcy. Bankruptcy is a procedure created to reduce the effects of a debtor's financial crisis by prescribing a process of management for the insolvent debtor's assets. The main objective of bankruptcy is to manage the insolvent debtor's assets by collecting all the assets and fairly distributing them to the debtor's creditors.

Initiation. The debtor's creditor can file a bankruptcy charge against the debtor with the Central Bankruptcy Court if the debtor is insolvent and indebted to one or more creditors for at least (*section 9, BA*):

- THB1 million if the debtor is a natural person.
- THB2 million if the debtor is a legal entity.

During the dissolution of a debtor who is a registered partnership, limited partnership, limited company or any other legal entity the liquidator of that legal entity can also submit a petition to the court asking that the legal entity be declared bankrupt if it appears that contributions or shares have been fully paid up and that the assets are insufficient to cover the debts (*section 88, BA* and *section 1266, CCC*).

Under the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud, B.E. 2527 (A.D.1984), a public prosecutor has the power to commence bankruptcy proceedings against a borrower suspected to have committed an offence under the Decree where the borrower is bankrupt, or does not have

sufficient assets to repay his debts, and owes a lender (or many lenders) a total sum of at least THB1 million.

Although neither the debtor nor the creditors have an obligation to initiate bankruptcy, the liquidator of a legal entity has a duty to submit a petition to the court asking that the legal entity be declared bankrupt. If it fails to do so, the liquidator can be held criminally liable under section 34 of the Act on Offences Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations, B.E.2499 (A.D.1956).

Substantive tests. After a bankruptcy charge has been filed against the debtor, the court must determine the following facts (*section 14, BA*):

- Whether the debtor is insolvent.
- Whether the debtor is a natural person who is indebted to one or more creditors for at least THB1 million, or the debtor is a legal entity who is indebted to one or more creditors for at least THB2 million.
- Whether the amount of the debts can be definitely determined (regardless of whether they become due for payment immediately or at a future date).

If the creditor initiating the bankruptcy charge is a secured creditor, the court must consider certain additional facts (*section 10, BA*). The secured creditor initiating the bankruptcy charge must appraise the value of the asset secured. The amount of the debt owed to the secured creditor (once the value of the asset secured has been deducted from the entire debt) must amount to at least the following amount for the court to make an order for receivership:

- THB1 million (for debtors who are natural persons).
- THB2 million (for debtors who are legal entities).

If the court finds these facts proved, the court will order the debtor to be under absolute receivership (*section 14, BA*).

Consent and approvals. The process of approving a bankruptcy proceeding can be divided into two phases:

- Consideration by the court whether or not to issue an order that the debtor is under absolute receivership (*section 14, BA*).
- Creditors' meeting to consider the debtor's proposal for composition, thereby avoiding bankruptcy (debtor's proposal).

Where the court has ordered the debtor to be under absolute receivership, the receiver must call a meeting of all the creditors as soon as possible to consider whether the debtor's proposal should be accepted, or whether the court should be asked to declare the debtor bankrupt, and to consult as to the future management of the debtor's assets (*section 31, BA*). The creditors' resolution on the issue of whether to accept the debtor's proposal or ask the court to declare the debtor bankrupt must be passed by special resolution (a resolution by a majority of creditors whose debts equal three quarters of the total debts of creditors present at the creditors' meeting, in person or by proxy, and voting on that resolution (*section 45*)). The issue regarding the management of the debtor's assets must constitute a majority in value of the debts of the creditors attending the creditors' meeting, in person or by proxy, and voting on the resolution (*section 6, BA*).

The court will declare the debtor bankrupt in the following circumstances (*section 61, BA*):

- The creditors have passed a resolution asking the court to declare the debtor bankrupt.
- No resolution has been passed by the creditors at the creditors' meeting.
- The creditors did not attend the creditors' meeting.
- The creditors have not approved the debtor's proposal.

Supervision and control. Once the court has made an order for receivership, the debtor is prohibited from doing any act relating to his assets or his business, except where that act is done by order of

approval of the court, the receiver, the administrator of the assets or the creditors' meeting (*section 24, BA*).

Protection from creditors. Once the court has made an order for absolute receivership, the debtor is protected from creditors as follows:

- No creditor can file a petition to have the debtor declared bankrupt (*section 15, BA*).
- No creditor can institute a civil action relating to a debt for which he can claim payment under bankruptcy proceedings (*section 26, BA*).
- No creditor can ask for repayment of its debt by means other than those which comply with the bankruptcy procedure (even where that creditor already has a judgment against the debtor or has filed a civil action which is still pending) (*section 27, BA*).

However, there is no legal provision governing the termination of contracts. Consequently, these matters are governed by the terms of the agreement between the parties.

Length of procedure. A bankruptcy proceeding generally takes around three to six months, provided the debtor does not raise an objection in the bankruptcy hearing which occurs after the creditors have petitioned for bankruptcy. It can take around eight months to one year if the debtor raises an objection, from initiation to the date of the bankruptcy declaration.

Conclusion. The procedure is different depending on whether the debtor is a natural person or a legal entity:

- **Natural person.** If the debtor is a natural person, once the court has made an order for receivership, the debtor is prohibited from performing any act relating to his assets or business. Therefore, it is no longer possible for the debtor to continue his business with trading partners. After the order declaring bankruptcy is made, the receiver will collect and sell the debtor's assets and the creditors will be paid in order (*see Question 2*).

However, a debtor can be dismissed from bankruptcy by a court order discharging the bankruptcy:

- where the court considers that the debtor is not a dishonest bankrupt, and at least 50% of the assets have been distributed to repay the creditors applying for the repayment of debts (*sections 71, BA*); or
- on the lapse of three years from the date the court declared him bankrupt (exceptions apply) (*section 81/1, BA*).
- **Legal entity.** If the debtor is a legal entity, once the court made an order for receivership, the debtor cannot continue to operate its business and must be dissolved and commence the liquidation process. Therefore, the debtor must cease doing business with its trading partners. The receiver will collect the debtor's assets, including contributions or shares that are still unpaid from partners or shareholders of the legal entity, and distribute the assets to the creditors, including its employees. A debtor which is a legal entity cannot be discharged from bankruptcy, since the debtor has already been dissolved.

STAKEHOLDERS' ROLES

8. Which stakeholders have the most significant role in the outcome of a restructuring or insolvency procedure? Can stakeholders or commercial/policy issues influence the outcome of the procedure?

Stakeholders

Bankruptcy procedure. The stakeholders with the most significant role in the outcome of a bankruptcy procedure generally are the creditors and the receiver.

Creditors are entitled to file a bankruptcy charge against a debtor and decide whether that debtor's proposal for repaying the debts

owed should be accepted, or whether the court should be asked to declare the debtor bankrupt in the first meeting of creditors (*sections 9 and 31, BA*).

The petitioning creditor has a very important role in the outcome of a bankruptcy proceeding, since he has a duty to look after the interests of all creditors, for example, by:

- Submitting a motion asking for an order for the temporary receivership of the debtor's assets.
- Assisting the receiver in collecting and distributing the debtor's assets.
- Being responsible for all fees, losses, and expenses in a bankruptcy action.

The co-operation of the petitioning creditor is also crucial to the success of the proceedings, since the court can order the termination of the proceedings if the petitioning creditor does not assist, or refuses to pay the fees or expenses as they become due and no other creditor is capable and willing to do so (*sections 17, 135(1) and 155, BA*).

Reorganisation procedure. The stakeholders with the most significant role in the outcome of a reorganising procedure are the creditors.

Creditors are entitled to file a petition to request that a debtor undergo a business reorganisation. Creditors also have the right to raise an objection to the plan preparer nominated by the petitioner of the business reorganisation, to nominate another person as the plan preparer, and to cast their votes in appointing the plan preparer (*sections 90/4 and 90/17, BA*).

In the process of approving a business reorganisation plan, creditors can ask to revise the plan, cast their votes and appoint a new plan preparer (*sections 90/45, 90/46 and 90/51, BA*).

Influence on outcome of procedure

Bankruptcy procedure. Creditors have significant influence on the outcome of a bankruptcy procedure since, in the first meeting of creditors, the creditors must consider whether the debtor's proposal for composition should be accepted, or whether the court should be asked to declare the debtor bankrupt. Since the debtor's proposal must be adopted by a special resolution, a creditor whose debts equal three-quarters of the total debts will have absolute control over the special resolution, and a creditor whose debts equal more than one-quarter of the total debts can decide singlehandedly to ask the court to declare the debtor bankrupt (*sections 31 and 45, BA*).

There are no other significant commercial or policy issues that affect the outcome of bankruptcy procedures.

Creditors whose debts relate to taxes, or government or municipality land tax, are afforded a high level of protection since these creditors are not bound by either a debtor's proposal for composition accepted by a meeting of creditors and approved by the court, or an order discharging the bankruptcy. The rights of a secured creditor over secured assets are also not affected by bankruptcy proceedings (*sections 56, 77 and 95, BA*).

Reorganisation procedure. Any secured creditor possessing debts of at least 50% of the total debts of creditors will have absolute control over the approval of the business reorganisation plan. See *Question 6* in relation to the approval of the business reorganisation plan (*sections 90/42bis and 90/46, BA*).

There are no other significant commercial or policy issues that affect the outcome of reorganisation procedures.

A particular interest is given a high level of protection in reorganisation procedures, namely, where a creditor has a tax obligation or other debt required to be paid by a specific law. Such a creditor has a right to be repaid without filing an application for repayment of its debts (*section 90/62, BA*).

LIABILITY

9. Can a director, partner, parent entity (domestic or foreign) or other party be held liable for an insolvent debtor's debts?

Director

The liability of company directors is separate from the liability of the company. Therefore, the directors can neither be held liable for the company's debts nor have a bankruptcy charge filed against them due to the fact that the company is bankrupt.

Partner

When the court has issued an order placing a registered ordinary partnership or a limited partnership under receivership, the petitioning creditor or the receiver can file a motion for the adjudication of the bankruptcy of any persons who are found to be unlimited partners in that partnership, without having to file a new action (*sections 1025 and 1077, CCC and section 89, BA*).

Parent entity (domestic or foreign)

Shareholders of a company, including a parent entity, either domestic or foreign, are not liable for a company's insolvency. However, if the shares of the parent entity have not been fully paid up, the parent entity is still held liable for the payment of those shares.

Other party

A debtor's proposal for composition does not release a guarantor or a debtor who is bound to a debt jointly with the debtor (joint debtor) until the whole debt has been paid off (*sections 291 and 680, CCC and section 59, BA*).

SETTING ASIDE TRANSACTIONS

10. Can an insolvent debtor's pre-insolvency transactions be set aside? If so, who can challenge these transactions, when and in what circumstances? Are third parties' rights affected?

The receiver can file a motion with the court for an order to cancel transactions in the following two circumstances:

- Any transaction done by the debtor with the knowledge that it would prejudice his creditor can be set aside, but this does not apply if the person enriched by that act did not know, at the time of the act, that the act would make it prejudicial to the creditor and it is not a gratuitous act. However, the cancellation of the transaction cannot affect the rights of a third party acquired in good faith (*sections 113 and 114, BA and sections 237 and 238, CCC*).
- Any transfer of assets made, or any actions taken or permitted to be taken by the debtor, during the three months prior to an application to have him declared bankrupt (and thereafter), which are done with the intention to give undue preference to a creditor, can be cancelled by the court. However, the rights of third parties acquired in good faith and with consideration prior to the application for bankruptcy will not be affected (*sections 115 and 116, BA*).

CARRYING ON BUSINESS DURING INSOLVENCY

11. In what circumstances can a debtor continue to carry on business during rescue or insolvency proceedings? In particular, who has the authority to supervise or carry on the debtor's business during the process and what restrictions apply?

Bankruptcy proceeding

After the court has made an order that the debtor is under receivership, the receiver will have the power to manage the debtor's business and the debtor is prohibited from carrying on its business (*sections 22 and 24, BA*).

Reorganisation proceeding

Commencing from the day on which the court issues an order accepting a petition for a business reorganisation, the debtor must not dispose of, distribute, transfer or let any assets, pay a debt, create a debt, or take any action which creates encumbrances over its assets, except where that act is essential to enable the debtor to carry on its business as normal (*section 90/12, BA*).

After the court orders a business reorganisation, the power and duties of the debtor's executive in managing the business and assets will cease and will be transferred to the interim executive, the receiver or the plan preparer. Nevertheless, the debtor's business will not cease to operate during this procedure and, ultimately, once the court has issued an order approving the plan (causing the rights and duties of the plan preparer to pass to the plan administrator), the plan administrator will carry on the debtor's business to disburse the debtor's debts within the scope set out by the business reorganisation plan (*sections 90/20, 90/25 and 90/59, BA*).

ADDITIONAL FINANCE

12. Can a debtor that is subject to insolvency proceedings obtain additional finance both as a legal and as a practical matter (for example, debtor-in-possession financing or equivalent)? Is special priority given to the repayment of this finance?

A debtor under insolvency proceedings cannot obtain any additional finance. However, if the receiver considers it necessary to borrow money for the benefit of the management of the debtor's assets, the receiver, on receiving the court's permission, can obtain loans. Debts from these loans will be considered expenses of the receiver in managing the debtor's assets, and lenders of these loans will have priority for being repaid (*sections 24, 114 and 130, BA*).

MULTINATIONAL CASES

13. What are the rules that govern a local court's recognition of concurrent foreign restructuring or insolvency procedures for a local debtor? Are there any international treaties or EU legislation governing this situation? What are the procedures for foreign creditors to submit claims in a local restructuring or insolvency process?

Recognition

Thai courts do not recognise any foreign restructuring or insolvency procedures relating to a local debtor (*section 177, BA*).

Concurrent proceedings

Thai courts do not co-operate with foreign courts in any concurrent proceedings in other jurisdictions (*section 177, BA*).

International treaties

Thailand is not a party to any international treaties as regards restructuring and insolvency procedures. The UNCITRAL Model Law on Cross-Border Insolvency 1997 (UNCITRAL Model Insolvency Law) has not been adopted.

Procedures for foreign creditors

In order for a foreign creditor to submit a claim for repayment of debts in a Thai bankruptcy proceeding, it must (*section 178, BA*):

- Prove that creditors in Thailand are similarly entitled to claim for the payment of debts in bankruptcy actions under the laws and before the courts of the country of which the foreign creditor is a national.
- Report the amount of the assets or distribution that it has received (or is entitled to receive) from the same debtor's estate

located outside Thailand, if any. If so, it must agree to deliver the assets or distribution from the debtor's estate so that they can be added to the debtor's estate in Thailand.

A creditor who resides outside Thailand may be allowed to file a claim up to within four months of the date of publication of the order of bankruptcy. This is unlike a resident creditor, who must file the claim within two months (*section 97, BA*).

REFORM

14. Are there any proposals for reform?

Currently, there are no proposals for reform of the bankruptcy and reorganisation law of Thailand.

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Areas of practice. Extensive experience in banking and finance; debt restructuring; litigation; corporate activities; M&A; joint ventures; real estate; foreign investments; and aviation and maritime law.

Recent transactions

- Advised Saha Farms and Krung Thai Bank on a major restructuring and rehabilitation matter in Thailand, valued at US\$1 billion.
- Advised Triple T Broadband on debt reorganisation, valued at US\$2 billion.
- Advised Siam City Bank and Ex-Im Bank of Thailand - Dhara Dhevi on an exclusive luxury hotel rehabilitation.
- Represented Thai and international clients in numerous acquisitions involving the negotiation and preparation of contracts in diverse commercial contexts both domestically and internationally.
- Represents banks, financial institutions, and borrowers in major financing and refinancing transactions and advises corporations on service agreements and credit facility matters in project financing transactions.

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Areas of practice. Extensive experience in litigation and arbitration proceedings. Specialises in complex restructuring and insolvencies. Routinely advises domestic and international clients in a wide variety of industries.

Recent transactions

- Advised Saha Farms and Krung Thai Bank on a major restructuring and rehabilitation matter in Thailand, valued at US\$1 billion.
- Advised Ex-Im Bank of Thailand on the restructuring of TT Ceramic Co. Ltd, valued at US\$75.2 million.
- Advised Triple T Broadband on debt reorganisation, valued at US\$2 billion.
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