

CHAPTER 25

BANKRUPTCY, LIQUIDATION AND CORPORATE RESTRUCTURING

Thailand experienced the worst economic crisis in its history in 1997. The Baht, which had historically been subject to a fixed exchange rate of 25Baht: US\$1, came under intense speculative pressure. The government declined to float the Baht and attempted to defend the currency at a fixed exchange rate. In July 1997, after spending most of the country's foreign exchange reserves in order to support the fixed exchange rate, the Government was forced to allow the Baht to float and find its own market exchange rate. The result was that the Baht devalued substantially, eventually falling to a rate of 55 Baht: US\$1 by January 1998.

In August 1997, Thailand had to seek emergency facilities from the International Monetary Fund in the sum of US\$17 billion. The fall in the value of the Baht meant that the loan burden of many companies who had borrowed in foreign currency, increased dramatically. Sales fell, businesses closed and unemployment rose. 54 finance companies and several banks were closed on the grounds of capital inadequacy, and their assets seized.

Since the crisis, there have been numerous initiatives taken to recycle the seized assets of insolvent financial institutions and to restructure non-performing loans.

The first attempt was the establishment of the Financial Restructuring Authority. The purpose of the FRA was to take over the assets of intervened finance companies and banks, and prepare them for sale at the best possible price. The Asset Management Corporation was established at the same time, to manage the seized assets, pending disposal.

The second phase was the setting of a voluntary debt restructuring protocol, under the provisions of two agreements, which came to be known as the CEDRAC Agreements. These agreements were entered into by the Thai Bankers' Association, major commercial banks and a number of major debtors. The purpose was to encourage the voluntary restructuring of distressed companies.

Voluntary restructuring had only a limited degree of success. Many banks also took matters into their own hands by establishing their own asset management companies, and transferring non performing loans to those companies. This strategy enabled them to focus on particular debtors, and also to improve the profile of their balance sheets by transferring NPLs to a subsidiary company. Some banks sold off their whole portfolio of NPLs, once again, in order to improve the quality of their balance sheets, and so that they could comply with increased loan provisioning requirements imposed by the Bank of Thailand to prevent the recurrence of reckless lending practices.

The next phase was an amendment to the Bankruptcy Act (1940) to enable distressed companies or their creditors to apply to the Court for an order permitting financial reorganization of the company (see in detail below). At the same time, an Act was passed to establish a separate Bankruptcy Court, to have jurisdiction over bankruptcy, liquidation and reorganization proceedings. There have been several amendments to the Act since then.

Whilst all these initiatives have had varying degrees of success, there were still a large number of non-performing loans in the system. In 2002, the government established the Thailand Asset Management Corporation. The TAMC was given power, firstly to compel certain financial institutions to transfer NPLs to the TAMC, and secondly to enable the TAMC to put pressure on debtor companies to negotiate restructuring plans. Where debtors refuse to cooperate with the TAMC, it ultimately has power to put them into liquidation. The TAMC has achieved a substantial degree of success at encouraging voluntary reorganisation, and where companies have refused to negotiate, the TAMC has issued reorganisation proceedings to force restructuring. Assets of non performing companies have been resold at fair market price, wherever possible.

But the real resolution of non-performing loans has been the general economic revival from 2002 onwards.

In this chapter, we consider below the law regarding bankruptcy, liquidation of companies, and restructuring of companies.

Bankruptcy

The Bankruptcy Act (1940) contains the essential law applicable to bankruptcy of individuals and juristic persons.

Grounds for filing a bankruptcy petition – unsecured creditor A unsecured creditor who wishes to present a bankruptcy petition may do so, provided:

1. the claim is for a fixed amount;
2. the debtor is insolvent; and
3. the debtor is indebted to one or persons for not less than Baht one million (in the case of a natural person) or Baht two million (in the case of a company or juristic partnership).

Petition by a secured creditor A secured creditor can present a petition if:

1. he is not forbidden from enforcing his demands for payment against the debtor's property that exceeds the value of the property that is secured;

2. in the petition, he states that once the debtor is bankrupt, he consents to waive his security in the interest of all the creditors or that with regard to the security the value of which is set out in the petition, after deducting that amount from the debt owed to him, the balance does not cover the debts owed by the debtor, in the amount of one million Baht (where the debtor is a natural person) or two million Baht (where the debtor is a company or juristic partnership).

Presumption of insolvency A debtor is presumed to be insolvent if any of the following grounds exists:

1. The debtor transfers his assets, or the right to manage his assets, to another for the benefit of his creditors generally, regardless of whether the transfer is made in Thailand or elsewhere.
2. The debtor transfers or delivers his assets with dishonest or fraudulent intent, regardless of whether the transfer is made in Thailand or elsewhere.
3. The debtor transfers his assets or creates any rights over his assets which, if he was bankrupt, would be deemed a preferential act, regardless of whether the transfer is made in Thailand or elsewhere.
4. The debtor commits any of the following acts in order to delay payment of his debts, or in order to prevent a creditor from receiving payment of debt:
 - (a) The debtor leaves Thailand, or having previously left, remains outside Thailand.
 - (b) The debtor leaves the property in which he has resided, or hides himself in any premises, or absconds or leaves by other means or closes his place of business.
 - (c) The debtor transfers assets outside the jurisdiction of the court.
 - (d) The debtor does any of the following:
 - Leaves Thailand, or having left Thailand, remains outside the country
 - Leaves the place where he used to live, or hides himself in the premises, or escapes by other means, or closes his place of business;
 - Removes his property from the Court's jurisdiction

- Submits to a court judgment which requires him to pay money that he should not pay
5. The debtor's are seized under a writ of execution or where there are no assets capable of being seized to pay the judgment debt.
 6. The debtor makes a declaration to the court in any proceedings that he is unable to pay his debts.
 7. The debtor notifies any creditor that he cannot pay his debts.
 8. The debtor submits a proposal for composition of his debts to any two or more of his creditors.
 9. The debtor receives not less than two written demands for payment of debt at intervals of not less than 30 days, and the debtor does not pay such debts.

Corporate bankruptcy

Who is liable? A registered ordinary partnership, a limited partnership a private or public company may be made bankrupt and the entity liquidated on the following grounds:

1. the share capital has been entirely spent; and
2. the assets are insufficient to meet liabilities

Who may apply? In addition to the persons listed above, the liquidator of a juristic person may petition for bankruptcy.

Procedure after bankruptcy petition filed After the petition is filed with the court, a date for hearing is fixed. A summons is served on the debtor, together with a copy of the petition. At the hearing the court will, if it is satisfied that the grounds for bankruptcy are proved, it will issue an order for absolute receivership. A temporary receivership order may also be issued, on the application of the petitioning creditor until the full hearing of the bankruptcy petition, if the court is satisfied that the petition establishes a prima facie case for receivership.

The case will then proceed. The petitioner must prove the grounds for bankruptcy, in particular that the debtor is insolvent. The debtor may defend the case on the grounds that the requirements are not met, or that he has or will have the ability to discharge his debts, or on other grounds.

Official receiver After an order for temporary or absolute receivership has been made, the official receiver will assume responsibility for the management of the debtor's affairs, to collect and receive money or property on behalf of the debtor, to compromise any claims and to issue or defend any legal proceedings.

Filing proof of debt When an order for control of the debtor's property has been made, such order must be published in the Government Gazette and one daily newspaper. Creditors have two months from the date of publication of the order, to file proof of debt with the Official Receiver's office. Where a creditor is outside Thailand, this may be extended for a further period of two months.

Position of secured creditors A secured creditor need not file proof of debt, but must permit the inspection of any secured property. He may file proof of debt, provided:

1. He agrees to surrender the secured property for the benefit of all creditors.
2. After he has sought enforcement of his debt against secured property, but there are insufficient proceeds, he may prove for the balance.
3. Where he has requested the Official Receiver to sell the secured property by auction, he may prove for any balance of debt not recovered.
4. After a valuation of the property secured, he may prove for the balance.

In general, a secured creditor will not be unaffected by the issue of bankruptcy proceedings, except that after a receivership order has been made, the receiver will assume all the rights of creditors in relation to their dealings with the creditor.

Meeting of creditors After an order for absolute receivership has been made, the Official Receiver will issue notices to convene a meeting of creditors. At the meeting, negotiations may take place to ascertain whether it is possible for a composition to be made with the debtor, whether the court will be asked to adjudge the debtor bankrupt, and to consider proposals for the future management of the debtor's property. Creditors may vote on any proposal for composition, provided they have filed proof of debt. Creditors who have not yet claimed their debts, may with the approval of creditors who have already claimed their debts, be permitted to vote. The meeting may resolve to appoint a creditors committee consisting of not less than three and not more than seven persons. Resolutions of a creditors committee are passed by a majority vote of the committee.

Public examination After the first meeting of creditors, the public examination of the debtor will commence. The debtor is required to answer questions on oath from the Official Receiver and creditors concerning his business and property, reasons for insolvency, any thing that he done or failed to do, or any conduct that

may entitle the court to refuse to discharge him from bankruptcy in the future. At the end of the enquiry, the court will complete a report and submit it to the Official Receiver.

Property which is subject to realisation The following property is subject to realisation:

1. All property which the debtor owns from the commencement of the proceedings including rights over property of third parties, excluding personal belongings necessary for living which the debtor, his wife and children reasonably require to use in their condition of life; and livestock, plants, and instruments used by the debtor in performing his profession in the amount, not exceeding Baht 100,000.
2. Property acquired after the commencement of the proceedings until discharge.
3. Property in the possession of, or subject to the debtor's right to dispose of in the course of business with the consent of the owner, which create the impression that they are owned by the debtor.

Composition The debtor may submit a proposal for the composition of his debts to the Official Receiver within seven days after the debtor has submitted the explanation of his affairs, referred to above. A proposal for composition may be accepted by creditors holding 75% in value of the total debts, and with the approval of the court. A composition may be rejected by the court where:

1. No provision is made for payment of debts in the prescribed order for payment under the Act.
2. The composition is not of benefit to the creditors generally, or it provides for preferential treatment of creditors or it discloses conduct of the debtor that would prevent his discharge from bankruptcy.

Where the court accepts the composition, then it will bind all creditors who have claimed payment but does not bind a debtor in respect of a debt that under the Act, survives discharge.

Where the debtor fails to comply with the composition and on certain other grounds, the court can issue a bankruptcy order.

Bankruptcy order Where an order for absolute receivership has been made, and the creditors have resolved to have the debtor declared bankrupt, or no resolution is passed at the creditors meeting or the composition has not been approved by the creditors and on certain other grounds, then the court will

adjudge the debtor bankrupt. Bankruptcy takes effect from the date that such an order is made.

The debtor may still submit a proposal for composition after being adjudged bankrupt, in certain circumstances.

Procedure after adjudication of bankruptcy After being adjudged bankrupt, the debtor must cooperate with the Official Receiver and the creditors committee. Steps will then be taken to realise his assets and distribute the proceeds amongst creditors.

Order for distribution The order for distribution of monies realised in the proceedings is as follows:

1. Administration expenses for a deceased debtor's estate.
2. Official Receiver's expenses.
3. Reasonable funeral expenses of a deceased debtor.
4. Court fees for calling in property under the Act.
5. Court fees of the petitioning creditor and lawyers' fees as approved by the Court or the Official Receiver.
6. Taxes due within six months prior to the order for absolute control and wages of employees for two months prior to the order for absolute control, but not exceeding a certain amount per person.
7. Other debts.

If the monies realised are insufficient to pay the debts in a class, the debts abate rateably inter se.

Discharge The debtor, an interested party, or the Official Receiver may apply to the court for discharge from bankruptcy. Application can be made on the following grounds:

1. The Official Receiver cannot bring about a beneficial outcome to the proceedings because a petitioning creditor fails to assist or pay fees or expenses or deposit security as directed and no other creditors are able or willing to do so within one month from the date that the petitioning creditor failed or neglected to do so;
2. The debtor is not suitable to be adjudged bankrupt;

3. All the debts of the bankrupt have been fully repaid;
4. Where the Official Receiver has made a final distribution of property or where there is no more property to be distributed and within the next ten years the Official Receiver is unable to collect any more property of the bankrupt and no creditor presents himself and requests the Official Receiver to collect the assets of the bankrupt.

Procedure for discharge Notice of the hearing for discharge must be given to creditors. At the hearing, the Official Receiver will submit a report on the debtor's conduct during the bankruptcy. The court will take into account the report, the evidence of the debtor, and the creditors.

Grounds for discharge The court shall order discharge if it finds that:

1. Distribution of property for payment to petitioning creditors has been made to cover at least 50% of the debts; and
2. The debtor is not a dishonest bankrupt. (this means he has committed certain specified offences under the Act, or certain other specified criminal offences)

Effect of discharge Discharge means that the bankrupt is discharged from all liability in respect of which payment can be claimed except for tax or duties, debts incurred through his dishonesty or debts not claimed due to his dishonesty.

Automatic discharge A person is automatically discharged from bankruptcy after three years from the date of the bankruptcy order provided that:

1. The bankrupt has been previously adjudicated bankrupt and a period of five years has not passed from the date of the previous bankruptcy order until the date of the later order for control of property; in such cases the period for automatic discharge shall be extended to five years.
2. He is a dishonest bankrupt not described under the next paragraph: here the period for automatic discharge is ten years. This is unless there are special reasons, and the debtor was adjudged bankrupt not less than five years earlier, in which case the Court may order discharge before the expiry of ten years on the application of the Official Receiver or the bankrupt.
3. He was made bankrupt by or in connection with fraudulent lending; in which case the period for automatic discharge shall be ten years.

The Official Receiver can apply to the Court before the end of the three year period above, for an order to suspend the counting of time.

Fraudulent acts The Official Receiver may apply to the court to cancel any fraudulent acts, as defined in the Civil and Commercial Code:

1. Any act done with the knowledge that it would prejudice a creditor, unless the beneficiary of the act did not know of the facts that made it prejudicial, provided that in the case of an act without consideration, the debtor's knowledge alone is sufficient.
2. The rights of a third party acting in good faith are not affected unless the right is acquired for no consideration.

If the act was committed within one year before the bankruptcy petition or after its issue, or the act was without consideration, or was an act where the debtor received unreasonably less than that which would be received, it shall be presumed to be a fraudulent act.

Any action to set aside a fraudulent act must be brought within one year from the date that the creditor knew of grounds to apply to set aside, or not later than 10 years after the act was committed.

Transfers without consideration and preferential acts Transfers of property, or any act affecting property, made during a period of three months prior to the bankruptcy petition with the intention of preferring one creditor over another may be set aside

If the referred creditor is associated (as defined) with the debtor, the period of three months referred to above is extended to one year before or any time after the petition is filed. This provision does not affect the rights of a party who acquired assets in good faith for consideration prior to the petition being lodged.

Debts that survive discharge The following taxes and debts survive discharge and are still payable:

1. central or local government taxes;
2. debts that arise through dishonesty or fraud committed by the bankrupt, or
3. debts which have not been claimed, due to dishonesty or fraud of the bankrupt.

Discharge does not affect the liability of the debtor's partner for a debt, or a joint debtor or any guarantor of the debt.

Liquidation

Liquidation of a private company

Liquidation of a private company can be divided into voluntary liquidation, i.e., by shareholders' resolution and involuntary liquidation, i.e., upon the application by an interested party or pursuant to a court order.

Voluntary liquidation Voluntary liquidation may be initiated by a resolution of shareholders passed by those holding at least 75% of the shares, and confirmed by the vote of at least two-thirds of all shareholders attending a second shareholders' meeting, held not less than 14 days nor more than six weeks after the first meeting.

Procedure In voluntary dissolution, the directors become the liquidators, unless the articles provide otherwise. A liquidation manager can be appointed by the directors. Within 14 days of the date of dissolution (i.e. the date of the second shareholders' meeting) the liquidator must:

1. Notify the public by at least two successive advertisements in a local newspaper, that the company is dissolved and that its creditors must apply to the liquidator for payment; and
2. Submit a similar notice to each creditor whose name appears in the books or documents of the company.

If any creditor does not apply for payment, the liquidators must deposit the amount due to him into a bank account or with the court for the benefit of the creditor.

The dissolution of the company and the name of the liquidator must also be registered at the Ministry of Commerce, within fourteen days of the dissolution.

Balance sheet and shareholders' meeting As soon as possible, the liquidators must prepare a balance sheet for the company. The balance sheet must be certified by the company's auditors and then presented to a general meeting of shareholders. At such meeting, the following business must be transacted:

1. to confirm the directors as liquidators, or to appoint other liquidators in their place; and
2. to adopt the balance sheet.

The meeting may direct the liquidators to prepare an account or to do whatever the meeting may deem advisable for the settlement of the affairs of the company.

Liquidator's powers The liquidators have power to:

1. issue or defend any legal proceedings and settle proceedings on behalf of the company;
2. carry on the business of the company;
3. sell the property of the company;
4. do any other acts as may be necessary for the beneficial conclusion of the liquidation.

Call for unpaid capital The liquidators may also require the shareholders to pay immediately any unpaid part of their shares. Once the shares are fully paid, if the assets of the company are insufficient to meet the liabilities, the liquidators must immediately apply to the court to have the company declared bankrupt.

Further procedure If the company is not put into bankruptcy, the liquidators must file a report every three months with the Ministry of Commerce stating the current account of the liquidation. If the liquidation lasts more than one year, the liquidators must summon a general meeting of shareholders and make a detailed report on the status of the liquidation.

When the business of the company has been liquidated, the liquidators must prepare an account of the liquidation, showing how the liquidation has been conducted and the property of the company disposed of. The liquidators must then summon a general meeting of shareholders for the purpose of presenting the report on the liquidation. When the shareholders' meeting approves the account, a copy of the minutes of the meeting must be registered at the Ministry of Commerce within 14 days from its date. This brings the liquidation to an end.

Involuntary liquidation

Grounds for liquidation A private company can be involuntarily liquidated on the following grounds:

1. Default in filing the statutory report or in holding the statutory meeting.
2. Failure to commence business within one year from the date of registration or suspending its business for a full year.
3. Where the number of shareholders is reduced to less than seven.

In the case of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of dissolving the Company, direct that the statutory report be filed or the statutory meeting be held.

Appointment of liquidator Similar to voluntary liquidation, the directors or a liquidation manager become the liquidators of the Company. Where no liquidator is appointed, the attorney general or an interested party may apply to the court to appoint a liquidator.

Further procedure In general, the process of involuntary liquidation is the same as that in the case of voluntary liquidation outlined above.

Liquidation of public companies

The liquidation of a public company may take place in the following ways:

1. Voluntary liquidation by shareholders resolution.
2. Involuntary liquidation by court order for bankruptcy.

Voluntary liquidation

Special resolution required A public company may be dissolved by a resolution passed at a meeting of shareholders passed by those holding not less than 75% of the shares carrying voting rights.

Involuntary liquidation

A public company can be involuntarily liquidated on any of the following grounds:

1. Where there is a court order adjudicating bankruptcy (see above).
2. Where a court order has been made to dissolve the company upon the application of shareholders holding in aggregate at least 10% of the total issued shares, and provided that one of the following grounds exists:
 - the promoters have contravened or failed to comply with the provisions relating to the statutory meeting or preparation of the report on the establishment of the company, or the board of directors has contravened or failed to comply with the provisions relating to payment on shares, the transfer of ownership of property to the company, or the making of documentation available to the company for its use of the various rights for payment for shares, the preparation of the list of shareholders, or the registration of the company;
 - the number of shareholders is reduced to less than 15;
 - the business of the company may only be continued at a loss.

Procedure for liquidation Except in the case of bankruptcy, the procedure for liquidation is as follows:

1. A liquidator must be appointed.
2. The board of directors must deliver all the property, accounts and documents of the company to the liquidator within seven days of the date of the dissolution.

Action by liquidator The liquidator must take the following steps within seven days of the date of his appointment:

1. register as liquidator;
2. registers the dissolution of the company;
3. publishes notice of dissolution in a newspaper;
4. within one month of his appointment, the liquidator must notify the creditors whose names appear in the accounts and documents of the company, to serve a notice requesting payment of debt on the liquidator within one month of being notified;
5. notify debtors whose names appear in the accounts and documents of the company to make payment of debts to the liquidator

Date of dissolution Dissolution takes effect on the date when the Registrar registers the dissolution. The company will continue to exist until completion of the liquidation.

Preparation of accounts The liquidator must arrange for the preparation of the balance sheet and profit and loss account for the period from the commencement date of the fiscal year until the registration of the dissolution. The accounts must be examined by the auditor within four months of the date of being appointed. The accounts must be submitted to a shareholders meeting for approval, within one month of their being received from the auditor. The approved accounts must be delivered to the Registrar, together with a copy of the minutes of the shareholders meeting, within 14 days of the date of the approval at the shareholders meeting;

Realisation of assets The liquidator may then proceed to collect and realise assets and to pay debts. After having paid or set aside monies for payment of all debts, if there is any property remaining, the liquidator will divide it between the shareholders pro rata in proportion to shares owned, unless the articles of association provide otherwise regarding preferred shares.

Liquidation report The liquidator must prepare a report on the liquidation and deliver it to the Registrar together with accounts every three months, until the liquidation is completed. Usually, the liquidation must be completed within one year of the dissolution being accepted by the Registrar.

If the liquidation cannot be completed within that time, the liquidator must summon a shareholders meeting every year, within four months from the end of the year, in order to present to the shareholders a report on the status of the liquidation.

If the liquidation cannot be completed within five years, the liquidator shall submit a report with reasons to the Registrar every three months, and the Registrar may order the liquidator to do any act to expedite the liquidation.

Reorganisation proceedings

The law relating to reorganisation of a company is to be found in Chapter 3/1 of the Bankruptcy Act, which was inserted into the Act in 1998.

Court with jurisdiction All reorganisation proceedings are issued in the Central Bankruptcy Court, where the registered office of the debtor is in Bangkok, or in a provincial Bankruptcy Court.

Definitions This part of the Act contains the following definitions:

A creditor includes secured and unsecured creditors.

A debtor means a debtor that is a private or public company or other juristic person, as prescribed by regulations.

Petition means a petition requesting the Court to order reorganisation of the business.

Petitioner, means a person who submits a petition to the Court.

Plan means the plan to reorganise the debtor's business.

Planner means the person who prepares the plan.

Plan administrator means the person who manages the business and assets of the debtor, pursuant to the plan.

Debtor's management means the directors, managers or persons with authority to conduct the debtor's business, on the date the Court orders reorganisation.

Interim administrator means the debtor's management who are temporarily authorised to manage the debtor's business and assets, pending appointment of the planner.

Right to issue reorganisation proceedings Reorganisation proceedings may be issued by:

1. a creditor or creditors;
2. the debtor;
3. a regulatory agency that supervises the activities of the debtor, that is:
 - The Bank of Thailand, where the debtor is a bank, finance company, finance and securities company or credit foncier company;
 - The Securities and Exchange Commission, where the debtor is a securities company,
 - The Insurance Department, where the debtor is a life or casualty insurance company
 - Any government agency that has authority over the debtor.

provided that the debtor must owe one or more creditors at least 10 million Baht, whether or not the debts are currently due.

Consent to issue proceedings The prior consent of the relevant regulatory authority for the issue of reorganization proceedings is required, where the debtor is a:

1. a bank, finance company, or credit foncier company;
2. a securities company;
3. an insurance company;
4. a company that is supervised by any governmental agency.

Approval or refusal of consent must be given within 15 days of a request, and there is a right of appeal against refusal to the Minister concerned. The Minister's decision is final.

No right to issue reorganisation proceedings There is no right to issue reorganisation proceedings where:

1. the Court has made an absolute receivership order over the assets of the debtor;
2. the Court has revoked the corporate registration of the debtor;
3. the liquidation of the debtor has taken place, for other reasons.

Contents of the petition The petition must contain the following information:

1. a statement that the debtor is insolvent;
2. a statement of the debts owed;
3. the names of the creditor(s) to whom the debtor owes at least 10 million Baht;
4. the reasons for and method of reorganisation;
5. the name and qualifications of the planner;
6. the written consent of the planner to act as such.

Where the debtor presents its own petition, it must include a list of all assets and liabilities and details of all creditors. Where a creditor petitions, it must include a list of all other known creditors.

Procedure after the petition has been filed After issuing the petition, the case will proceed as follows:

1. At least seven days before the hearing, the petitioner must serve the petition on all known creditors and on the Companies Registry, and also on the appropriate regulatory agency.
2. Details of the hearing must be advertised in newspapers.
3. At least seven days before the hearing, a creditor's petition must be sent to the debtor.
4. Prior to the hearing, the debtor must file a list of all its assets and liabilities at the Court.
5. At least three days before the hearing, either the debtor or a creditor may file any objection to the petition.

6. Where the debtor's assets are already under interim receivership, then a copy of the petition must also be sent to the Official Receiver.

General approach of the court The Court will permit reorganisation if:

1. the criteria under the Act are established;
2. there are reasonable grounds for reorganisation; and
3. the petition has been submitted in good faith.

Otherwise, it will dismiss the petition.

If there are no objections, and the Court determines that it is reasonable, it may permit reorganisation without conducting an enquiry.

Hearing and evidence The hearing must be conducted in accordance with the following rules:

1. the hearing must proceed on consecutive days, until judgment is given;
2. the petitioner and any objectors must attend all hearings;
3. if an objector fails to appear or fail to prepare his witnesses or evidence, he will be deemed to have lost interest in pursuing his objection;
4. if it is not possible for the person presenting the case to present the evidence, then if such evidence is important, the Court may grant a maximum of one adjournment;
5. where the petitioner or an objector is not presenting evidence at a hearing, he may be absent from the hearing without consent, in such cases a person who is absent will be deemed to have waived his right to cross examine any witnesses at that hearing.

A person who is not present at a hearing (with or without the Court's consent) is deemed to have knowledge of what occurred at that hearing.

Protections and immunities granted to the debtor Certain very substantial protections and immunities are granted to the debtor, which apply from the Court's acceptance of the petition until one of the following events occurs:

1. the expiry of the reorganisation period;
2. the completion of the reorganisation;

3. dismissal of the petition;
4. revocation of consent for reorganisation; or
5. an absolute receivership order has been made over the petitioner's assets.

Nature of the protections and immunities

1. No proceedings may be issued for dissolution of the debtor, and any pending proceedings are stayed.
2. The debtor's corporate status may not be revoked, without the Court's consent.
3. No license for the debtor's business may be revoked by any regulatory agency, neither may such an agency order the cessation of the debtor's business, without the leave of the Court.
4. No civil proceedings may be issued concerning the debtor's assets, or the submission of a dispute to arbitration, if the debt was incurred prior to approval of the plan. No bankruptcy proceedings may be filed against the debtor. If proceedings have already been issued or a dispute submitted for arbitration, those proceedings will be stayed.
5. Judgments may not be enforced against the debtor's assets if the debt which is the subject matter of the judgment was incurred prior to the Court's approval of reorganisation. If a party is taking steps to enforce a judgment, enforcement will be stayed.
6. Secured creditors may not enforce payment of their debts against secured assets, unless the Court orders otherwise.
7. Creditors enforcing payment of their debts may not seize or sell the debtor's assets, without the Court's consent.
8. Owners of assets that are important to the debtor's business, under hire purchase, sale, or other agreements, may not repossess those assets. All pending actions are stayed, unless there has been a default in two successive payments due.
9. The debtor may not dispose of or transfer assets, or offer them in payment of debts, or mortgage them, without the Court's consent, unless the transaction is necessary for the debtor's business.

10. Any interim orders granted may be revoked, suspended or varied by the Court accepting the reorganisation petition. If the petition is rejected or the reorganisation does not proceed or is revoked, such preservation orders may be reinstated.

11. Utility services such as water, electricity and telephone may not be discontinued without the Court's consent, or where reorganisation has been approved, the debtor, the planner or other person has failed to pay two successive invoices relating thereto.

Protection for creditors A creditor or any person adversely affected as a result of restrictions imposed on his rights to take action, may apply to the Court to vary or revoke any restriction imposed, on the grounds that it is:

1. not necessary for the reorganisation; or
2. adequate protection has not been given to any secured creditor.

Adequate protection is deemed to have been given if:

1. an amount equivalent to the portion of the decreased value of the secured asset has been paid to the secured creditor;
2. new security is given to the secured creditor to make up for any shortfall or decrease in value;
3. another arrangement is acceptable to the secured creditor; or
4. an arrangement is possible that will ensure the right of a secured creditor to obtain full payment of his debt from the secured property, which will not be impaired or jeopardised on the completion of reorganisation.

There is also provision to extend prescription periods for bringing claims, if such are due to expire.

Interim administration powers Before the planner is appointed:

1. The Court can appoint a person or the debtor's management, to act as interim administrator.
2. The Official Receiver has power to supervise the debtor's assets until an interim administrator is appointed.
3. The Official Receiver may define the authority and powers of the interim administrator.

If reorganisation is permitted, the Official Receiver will arrange for public announcement of the Court order permitting reorganisation in newspapers, and will also notify the Companies Registry, and any regulatory agency responsible for supervision of the debtor.

Appointing the planner The planner may be nominated:

1. by the debtor;
2. by a petitioning creditor, if such nomination is not opposed by the debtor or other creditors;
3. at a creditors meeting, if the Court feels that the planner nominated by the petitioner is unsuitable, or the debtor or an opposing creditor has nominated another candidate;
4. by creditors to whom a majority of the debts are owed, where the debtor does not propose a planner.

If the debtor does propose a planner, that person shall be appointed, unless he is opposed by creditors holding a majority of at least two thirds of the debts owed. Secured creditors are entitled to vote, based on the amount of the debt secured.

The candidate selected by the meeting and acceptable to the Court, shall be appointed as planner. If no planner is appointed at the meeting, the Official Receiver must convene another meeting to consider such appointment. If such meeting still cannot appoint a planner, the order for reorganisation will be revoked.

Requirements are also imposed for the public advertisement and notification to all creditors, of the convening of a creditors' meeting to appoint a planner.

Under ministerial regulations issued in 2000, a planner must have certain qualifications to enable him to be appointed and act as a planner.

Notification of the Planner's appointment The appointment of the planner must be:

1. communicated to all parties concerned, including all creditors whose names appear on the list of creditors filed with the Court, and any other creditors whose identity is known;
2. such notice will also specify the period within which such creditors can apply for payment of their debts;

3. when the planner has been appointed, the debtor's rights to manage its business, and all rights of the debtor's shareholders (except the right to receive dividends) pass to the planner (see above).

Suspension of shareholders' and directors' rights Until the appointment of the planner, and on the making of an order for reorganisation:

1. All rights of shareholders are extinguished, except for the right to receive dividends.
2. The usual rights of shareholders will be exercisable by the interim administrator or the Official Receiver, as the case may be.
3. After the planner is appointed, the debtor's right to manage its business, and all rights of shareholders (except for the right to receive dividends) pass to the planner.

Contents of the plan The plan must contain certain information, namely: the grounds for reorganisation, details of assets and liabilities, the principles for reorganisation and proposals for paying debts and other matters, and the timeframe for implementing the plan, which must not exceed five years.

Preparation and consideration of the plan The plan must be sent by the planner to the Official Receiver and all others concerned within three months of the planner's appointment. After receiving the plan, the official receiver must call a creditors' meeting to consider the plan. A creditor, the debtor or the planner may propose changes to the plan, at least three days before the meeting.

Groups of creditors Creditors are divided into the following groups for the purpose of approving the plan:

1. Each secured creditor whose debt is equal to or not less than 15% of the total debts, is classified as one creditor;
2. All other secured creditors are classified as one group;
3. Unsecured creditors are divided into several groups – those with the right to claim or benefit in essentially the same manner are classified in the same group;
4. Deferred creditors form one group.

Approval of the plan To approve the plan, there must be passed a resolution by 75% of those attending:

1. a meeting of creditors of each and every group; or

2. a meeting of creditors of at least one group (not being a group of creditors as below) which shall after adding together the total debts of creditors who approved the plan at the meeting of creditors of every group, constitute at least 50% of the debts of those creditors who attended the meeting by themselves or by proxy at that meeting, and who voted at the meeting. When calculating the total debt, it is deemed that creditors below attended the meeting and voted at the meeting.

Certain creditors excluded from the second paragraph above are presumed to approve the plan, as follows:

1. Creditors who have received a proposal for full payment of their debt that is in default with interest within 15 days of Court approval of the plan
2. Creditors who have received a proposal for repayment under a previous agreement
3. Deferred creditors

Court approval of the plan The Official Receiver must report to the Court the resolutions passed at the creditors' meeting. The Court must then convene a hearing to approve the plan.

At that hearing, the Court will approve the plan provided that:

1. The plan contain all the matters required by the Act
2. The proposals for repayment do not apply different treatment to creditors in the same group. Where the resolution is by one group of creditors only in accordance with the criteria above, the repayment proposals comply with the law regarding distribution on bankruptcy (except where the creditor consents otherwise)
3. If the plan implementation is successful, then the creditors will receive no less than they would if the debtor had been made bankrupt,

If the Court fails to approve the plan, it will then decide whether to issue a bankruptcy order against the debtor.

Consequences of approval of the plan

Once the plan is approved:

1. the planner's duties pass to the plan administrator. Approval of the plan will also be notified to any regulatory agency which supervises the debtor's business.
2. it is binding on all creditors who were eligible to file proof of debt.

Plan approval does not affect the liabilities of those who hold any liability jointly with the debtor, or those who are guarantors of the debtor's liabilities.

Creditors who fail to file their claims in time forfeit their right to claim payment, unless (1) it is otherwise stated in the plan; or (2) where the Court sets aside the order for reorganisation.

Amendment of the plan The planner must consent to any changes to the plan. If there is no request to change the plan, but the creditors fail to pass a resolution to accept the plan, then the Court must convene a hearing, which the debtor must attend. If the Court holds that there has been no request to change the plan and no resolution passed to approve the plan, it will revoke the order for reorganisation.

Where at least 10% in value of the creditors request a material alteration to the plan, then the meeting can be adjourned. If the planner refuses to change the plan, the creditors will be asked whether they wish to appoint a new planner, who should then be appointed promptly.

Amending the plan after approval If revisions to the plan are necessary after approval, the plan administrator may apply to the Court for approval of necessary amendments, and must also obtain the approval of the creditors' meeting. Neither the debtor nor the creditors may amend the plan, without the plan administrator's approval.

The plan administrator may request the Court's approval of any changes to the articles or memorandum of association of the debtor.

Duties of the debtor and other parties to cooperate The debtor has a duty to:

1. attend all Court hearings;
2. attend all creditors' meetings;
3. answer questions asked by the Court, the Official Receiver, the interim administrator, the planner and others. The debtor is also entitled to express his views at meetings, or in Court;

4. the interim management, the planner, the plan administrator and the interim plan administrator are also subject to the same obligations to cooperate.

Creditors' rights and voting at meetings The creditors who have the right to attend and vote for the planner at creditors' meetings, must comply with the following:

1. they are creditors with a right to claim payment of their debt,
2. the debt is outstanding on the date of the order for reorganisation, regardless of its date of maturity or other conditions; and
3. provided the creditor has submitted proof of debt to the Official Receiver, prior to the meeting.

At the meeting, creditors and the debtor can challenge the right of a creditor to vote. Any disputes arising will be decided by the Official Receiver.

Rights of creditors to claim debts The rights of creditors to claim their debts are subject to the following rules:

1. Creditors must submit particulars of debt claimed to the Official Receiver, within one month of the planner's appointment.
2. A debt may be claimed, if it arose prior to the order for reorganization.
3. Provision is also made in relation to debts incurred by the Official Receiver or interim administrator, or taxes, duties or other debts incurred from the date the order for reorganisation was made, but before the planner is appointed.
4. Secured creditors may enforce their claims against secured assets without having to submit a claim for repayment, but the Official Receiver or the Planner has a right to inspect the secured assets.
5. A creditor, the debtor or the planner, is entitled to dispute debts claimed. Objection must be made within 14 days after the end of the period for submission of claims for debts. Where a debt is disputed, the Official Receiver will determine any dispute, subject to a right of appeal to the Court within 14 days of his decision.
6. A creditor has voting rights based on the amount of the debt owed, provided that the amount of debt which is claimed is not disputed. The Official Receiver will rule on disputed voting rights.

7. Debts in foreign currency must be converted into Thai Baht at the exchange rate published by the Bank of Thailand, on the date that the order for reorganization is made.
8. Where there are no objections, the Official Receiver has the right to approve claims for debt payment, unless there are grounds for deciding otherwise.

Creditors' right of set off Where a creditor owes a debt to the debtor, he may set off his debt against that of the debtor owed to him, except where the right to set off arises after the date of the order for reorganization.

No proof of debt required No proof of debt need be filed in relation to:

1. debts incurred by the planner, plan administrator, or the interim administrator;
2. taxes or duties;
3. other debts due according to law, such as contributions to the Workmen's Compensation Fund payable by employers.

Disclosure of information concerning the debtor Duties to supply information are imposed on the debtor's management:

1. Within seven days of the planner's appointment, the debtor's management must submit to the planner an information memorandum, describing the business, assets and liabilities of the debtor, and containing certain other information.
2. The planner and plan administrator have a right to subpoena the debtor's management, the employees or the auditors of the debtor or others, who are believed to be holding assets of the debtor, or who have knowledge of the debtor's business, in order to obtain information about the debtor's assets or to require the production of documents or relevant evidence in their possession. Disobedience to such a subpoena renders a person liable to arrest.
3. Those who owe money to the debtor or who hold assets of the debtor, can be ordered by the Court to pay such debts or hand over such assets, on the request of the planner or the Official Receiver.
4. If the debtor claims that property held by another person should be delivered to him, then the Official Receiver is empowered to demand such property. Any disputes arising are to be decided by the Official Receiver, subject to a right of appeal to the Court.

Setting aside acts done The planner, the plan administrator or the Official Receiver can ask the Court to set aside fraudulent acts (as defined in the Civil and Commercial Code, and see section on Bankruptcy above).

1. If the act occurred after the petition was filed, or not more than one year prior to that date, or the act was done for no consideration, or the consideration was unreasonably inadequate, then it will be presumed that the debtor or such beneficiary knew that the interests of creditors would be prejudiced.
1. Any transfer of assets or act done by the debtor, after the petition was issued or within three months before the petition was issued, with the intention of preferring one creditor over another, may be set aside by the Court. The rights of third parties acting in good faith who pay reasonable consideration, are protected.

Plan administrator's right to disclaim The plan administrator has a right to disclaim the debtor's property or contractual obligations that exceed the benefits under the Plan, within two months of the Court approving the Plan. This is subject to the right of a creditor or a person suffering loss to apply to set aside such disclaimer, within 14 days of its knowledge of the same, or to claim compensation in the reorganisation.

Monitoring of the reorganisation The plan administrator is obliged to submit quarterly reports to the Official Receiver on the progress of reorganisation.

Conclusion of reorganisation The debtor's manager, the plan administrator, the interim administrator or the Official Receiver may request the Court to set aside the order for reorganisation if the reorganisation has been successfully completed. The Court on hearing such application may set aside the order, or extend the reorganisation period.

Extension of time for reorganisation If the time for reorganisation has expired but the reorganisation has not been completed, then the Court must be notified and a hearing convened to consider the matter. At the hearing, the Court has power to make a bankruptcy order, or to terminate the reorganisation.

Appeals The Act sets out certain rights of appeal in relation to decisions made.

Revised 1 August 2010