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Thailand

Restructuring & Insolvency

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Thailand.

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Thailand: Restructuring & Insolvency

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

The three main forms of security under Thai law that can be granted over property are mortgages, pledges and business securities.

Mortgage

A mortgage is a non-possessory security interest under which the mortgagor assigns property to a mortgagee as collateral to secure the performance of an obligation, without physically handing over the property to the mortgagee. Mortgages can be created over immovable property (e.g., land and buildings) or certain types of movable property, such as movable property registrable under applicable laws (e.g., machinery). To be valid, a mortgage agreement must be made in writing and registered with the relevant authority, e.g., the local Land Office for land and building mortgages, or the Central Machinery Office for machinery mortgages. Failure to comply with these relevant requirements will render the mortgage agreement void and unenforceable.

Pledge

A pledge is a possessory security arrangement under which the pledgor hands over property to the pledgee as security for the performance of an obligation. Certain valuable instruments, such as shares, bills of exchange, promissory notes, and cheques, can also be pledged by handing over the relevant document of title or right to the pledgee. A pledge does not require registration with a governmental body. To perfect the pledge, the pledgor must physically deliver the pledged property to the pledgee. Once the pledged property has been returned to the pledgor, the pledge will be extinguished. In the case of a pledge of shares in a private company, the share certificate must be handed over to the pledgee to perfect the pledge. For the pledge to be enforceable against a company and third parties, the pledge, along with the name and address of the pledgee, must be recorded in the company's share register book. The absence of such a record of the pledge in the company's share register book does not render the pledge void, but it prevents the creditor from enforcing the pledge against the company or third parties. Under the Thai Securities Act, a pledge of

shares traded on the Stock Exchange of Thailand will be valid when the pledge has been recorded by the Thailand Securities Depository Co., Ltd.

Business Security

A business security is a non-possessory form of security under which the security provider grants certain types of assets to a security receiver as collateral for the performance of an obligation. Assets that can be registered as business security include: (i) businesses (property used in the security provider's business operations and other rights related to its business operations); (ii) claims (excluding rights represented by instruments); (iii) movable property used by the security provider in business operations (e.g., machinery); (iv) immovable property (if the security provider operates a real estate business); (v) intellectual property; and (vi) any other assets as provided in the Ministerial Regulation issued under the Business Security Act.

A business security agreement must be made in writing and registered with the Business Security Registration Office. If it is not registered, the creditor will not be able to claim priority over such asset against third parties and will not be classed as a secured creditor in bankruptcy proceedings.

2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

Mortgage enforcement methods

A general method for enforcing a mortgage is through a public auction. A mortgagee may also elect to foreclose on the mortgaged property if the statutory criteria are met. Both enforcement methods require judicial enforcement, which is extremely time-consuming. This results in delays in resolving defaulting debts, while ongoing expenses coupled with default interest, typically accruing daily, continue to mount.

Out-of-court enforcement is also an option. A mortgagor can initiate the enforcement process at any time after the obligation becomes due, provided that no other preferential rights exist over the mortgaged property.

apart from those of the mortgagee. In such cases, the mortgagor is required to deliver a notice to the mortgagee, requesting a public auction procedure without having to file the case with the court. The mortgagee must then proceed with the public auction within one year of receiving the notice. Although out-of-court enforcement may be considered the preferable option for its flexibility and timeliness, it can raise uncertainties from the mortgagee's perspective due to the absence of a specific authority overseeing the process. In such cases, the mortgagee has to ensure that the procedures are properly carried out or that the enforcement will not later be subject to cancellation. Consequently, out-of-court enforcement is not widely used in practice.

Enforcement of business security

Enforcement of business security may be conducted out-of-court if the security provider cooperates with the security receiver in handing over possession of the secured assets. In practice, the enforcement process remains unclear, particularly in relation to business operations and claims. For instance, in the case of a 'business', it is uncertain how a security receiver can assume the security provider's position and continue business operations, or in the case of 'claims', a question arises as to how the security receiver may become a party and assert rights against third parties, especially where claims arise under contractual arrangements or agreements that include non-assignment or non-transfer provisions prohibiting changes in the contracting party. We are unaware of any precedent case of business security enforcement over an entire business or claims.

Rights of secured creditors in bankruptcy proceedings

In bankruptcy proceedings, a secured creditor may choose either to file an application for debt repayment or to exercise its rights over the secured assets. If the secured creditor opts for the latter, they must allow the Official Receiver to examine the secured assets. If the value of the secured assets exceeds the outstanding debts owed to the secured creditor, the Official Receiver will seize and sell the assets. The proceeds derived from the sale will be used to repay the debts owed to the secured creditor and, if any surplus remains, the debts owed to other creditors. However, if the value of the secured assets is expected to be lower than the debts owed to the secured creditor, the Official Receiver will instruct the secured creditor to initiate separate enforcement proceedings to realize the security. In practice, if the secured creditor chooses to exercise its rights over the secured assets and the proceeds from the enforcement are insufficient to cover the outstanding debt, the secured creditor will not be able to claim the

outstanding amount.

On the other hand, if a secured creditor chooses to file an application for debt repayment, they are required to relinquish its rights over the secured assets. Nevertheless, the creditor can recover any outstanding amount if the proceeds from the enforcement of those secured assets are insufficient to fully discharge the obligations.

Given that the secured creditor is required to elect only one of the above options, its rights in bankruptcy proceedings are relatively limited and still remain subject to the discretion of the Official Receiver. This may lead to uncertainty regarding the outcome of enforcement.

3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

Under Thai insolvency law, court-supervised restructuring proceedings, known as "rehabilitation proceedings" are available as a legal mechanism to rescue financially distressed debtors. Rehabilitation proceedings can be initiated (either by the debtor or the creditor) through the submission of a petition for rehabilitation ("**Petition**") to the Bankruptcy Court ("**Court**"), provided that the debtor is insolvent or unable to pay its debts as scheduled and owes a definite amount of not less than Thai Baht 10 million to one or more creditors, whether or not such debt has become due or not, and that there are reasonable grounds and a viable prospect of business rehabilitation.

Under the rehabilitation proceedings, a moratorium in the form of an automatic stay will be effective upon acceptance of the petition for rehabilitation by the Court and remains in place throughout the proceedings. The debtor can continue operating its business as a going concern, but the debtor is generally prohibited from carrying out activities that could negatively affect the value of its assets. Specifically, the debtor must not dispose of, distribute, transfer, let, pay debts on, incur obligations over, or do any act which creates encumbrances over the assets except where such act is necessary for the purpose of the ordinary course of business or otherwise authorized by the Court. This moratorium also restricts certain creditor rights that could impact the debtor's rehabilitation, such as the right

to initiate civil claims against the debtor or the right to repossess the leased assets, unless certain conditions under the bankruptcy law are met.

From the date the Court accepts the Petition for the rehabilitation, the debtor's management authority remains intact, and the debtor retains the power to manage its business and assets (subject to the restrictions imposed by the automatic stay). Once the Planner is appointed, such authority will transfer to the Planner, whose primary responsibility is to prepare a draft rehabilitation plan.

Once the creditors' meeting passes a resolution approving the rehabilitation plan, and the Court confirms and agrees to such rehabilitation plan, the Court will issue an order to approve the rehabilitation plan and appoint the Plan Administrator (as shall be proposed in the rehabilitation plan). Once the Court issues such approval, all powers and duties concerning the management of the debtor's business and assets will transfer from the Planner to the Plan Administrator, who will then proceed to implement the approved rehabilitation plan.

Among the stakeholders involved, the Court plays a significant role in monitoring and supervising the rehabilitation proceedings. The Court is required to consider and approve essential matters (e.g., the appointment of the Planner, the rehabilitation plan itself, and any significant transactions affecting the debtor's assets etc.). In addition, the Official Receiver can also play a significant role in providing the Court with opinions on the legality of the rehabilitation plan and overseeing the implementation of the rehabilitation plan.

4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Generally, when necessary, it is possible for the debtor to secure new financing during rehabilitation proceedings. In such cases, creditors who provide new funds are entitled to the repayment thereof according to the terms and conditions stipulated under the rehabilitation plan, which generally contain favorable terms in exchange for granting new financing during the distress. If the Plan Administrator obtains new financing after the Court has approved the rehabilitation plan, the rights of the new financiers are not subject to the restrictions of the automatic stay and may be enforced when the debt matures independently of the terms of the rehabilitation plan.

5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Rehabilitation proceedings cannot alter liabilities or release claims against non-debtor parties. Conversely, rehabilitation proceedings cannot render such non-debtor parties liable for any debts created under the rehabilitation plan unless they agree to the terms.

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

Normally, the creditors bear all fees and costs incurred in participating in rehabilitation proceedings. However, in certain circumstances, those fees and costs can be covered by the debtor and are claimable through filing a claim for repayment, subject to the contractual obligations stipulated in the relevant agreement between the parties and the provisions of the rehabilitation plan.

7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Corporate restructuring and insolvency in Thailand are principally governed by the Bankruptcy Act B.E. 2483 (1940) as amended (the "**Bankruptcy Act**"). Restructuring proceedings (known as rehabilitation proceedings) and insolvency proceedings (known as bankruptcy proceedings) can be initiated through formal court proceedings.

Only the insolvency test applies for bankruptcy proceedings. However, either an insolvency test or a liquidity test can be used for rehabilitation proceedings. Satisfying either test is sufficient for the Court to commence the rehabilitation proceedings.

Details of the insolvency and liquidity tests are as follows:

- **Insolvency Test.** A debtor satisfies the criteria of the insolvency test if the debtor's assets are found to be less than its liabilities in value. The Bankruptcy Act contains a list of acts by a debtor that give rise to a presumption of "*insolvency*", such as transferring or

delivering assets with dishonest or fraudulent intent, taking actions to delay debt payment or to prevent a creditor from receiving payment, etc;

- **Liquidity Test.** This test is comparatively more straightforward and easier to satisfy. The liquidity test can be triggered even if the debtor has more assets than liabilities, if it is proven that the debtor is experiencing financial distress, causing an *"inability to pay debt when it becomes due"*.

Under the Bankruptcy Act, no directors, management or officers of a debtor company are required or obliged to commence insolvency proceedings (whether bankruptcy or rehabilitation) when such debtor becomes *per se* insolvent or distressed. There is only one very specific circumstance where a liquidator of a distressed debtor, during a voluntary winding up process, discovers that the total contribution or paid-up shares and assets are insufficient to satisfy its liabilities. In such cases, the liquidator is required to commence voluntary insolvency proceedings, i.e., to file for bankruptcy proceedings with the Court without delay. If the liquidator fails to do so, the liquidator may be held criminally liable under the Act on Offences Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundations B.E. 2499 (1956) ("**Corporate Offences Act**").

8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

The Bankruptcy Act allows for insolvency proceedings to be handled through bankruptcy proceedings. Bankruptcy proceedings are court-supervised efforts to liquidate a debtor's assets and distribute the proceeds to creditors. During these proceedings, the debtor may continue to operate its business. If, after examining the evidence, the Court determines that the debtor is insolvent (i.e., the insolvency test is satisfactorily met), an absolute receivership order will be issued against the debtor, and all the debtor's business operations will be suspended. Upon the issuance of the absolute receivership order, the Official Receiver will be appointed by the Court to oversee and manage the debtor's assets, including collecting and receiving money or assets from the debtor, as well as disposing of the debtor's assets. From that point onward, the debtor will no longer have the authority to manage its business and assets.

A formal court-initiated composition before bankruptcy is

also available as a means to prevent a debtor from being declared bankrupt. This process involves a creditors' meeting and requires the Court approval and confirmation of the debtor's composition proposal. If the composition proposal is not approved, the Court may declare the debtor bankrupt. The Official Receiver will then initiate and supervise the realization and distribution process of the debtor's assets.

In typical cases, bankruptcy proceedings take approximately 12 and 18 months to complete.

9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

The Bankruptcy Act does not provide for a stay or moratorium in bankruptcy proceedings. Following the issuance of an absolute receivership order against the debtor, a creditor may only seek recovery of their debts through the procedures set forth under the Bankruptcy Act (e.g., filing an application for debt repayment).

For rehabilitation proceedings, once the Court officially issues its order accepting the rehabilitation petition for consideration, a moratorium (automatic stay) takes effect. Any ongoing actions or litigation against the debtor are suspended, and no new actions or civil lawsuits against the debtor can be filed, and secured creditors are prohibited from enforcing their security outside the rehabilitation proceedings.

Thailand does not recognize any insolvency or restructuring proceedings or court rulings relating to absolute receivership or automatic stay issued under the laws of other jurisdictions. The Court lacks tools to enforce such foreign orders. The effectiveness of an automatic stay or a Court's order abroad will depend entirely on whether the relevant foreign jurisdiction recognizes and enforces them under its own legal framework.

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

Creditors and/or other interested parties may attend the

hearings and contest the merits of a petition for bankruptcy or business rehabilitation filed with the Court.

As the proceedings progress, creditors have the right to file a debt repayment application within the specified timeframe prescribed under the Bankruptcy Act. They are also entitled to review debt repayment applications filed by other creditors in order to challenge the legitimacy of such applications, to ensure the asset pool is fairly distributed.

Creditors are also entitled to attend creditors' meetings and vote on any agenda items as may be raised by the Official Receiver, the Planner, or the Plan Administrator (as the case may be).

In rehabilitation proceedings specifically, the Planner is responsible for drafting a rehabilitation plan, which will be submitted to the creditors' meeting for approval. Subsequently, the Court will review the draft rehabilitation plan to ensure that it is aligned and in compliance with the Bankruptcy Act. The Court will consider various factors such as whether creditors in the same class are treated equitably, whether creditors would receive greater repayment than under bankruptcy proceedings, and whether the rehabilitation plan is fair overall if approved. The rehabilitation plan, once approved by the Court, becomes binding on all creditors who are or may be entitled to the debt repayment under the rehabilitation proceedings regardless of whether they voted in favor or not. In this regard, creditors will be repaid, and the debts will be discharged in accordance with the rehabilitation plan.

11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

In bankruptcy proceedings, the debtor's assets will be distributed to creditors in the following order of priority:

- a. Secured creditors (only in respect of the secured debts);
- b. Unsecured creditors in the following order:
 1. Official Receiver's costs and expenses;
 2. Court fees;
 3. Fees of the petitioning creditor and counsel fees as the Court or the Official Receiver may prescribe;

4. Taxes due within six months prior to the Court's order for receivership and payment of wages to the debtor's employees; and
5. Any other debts.
- c. Creditors whose right to repayment arises only after full repayment has been made to all other creditors, as provided by law or contract; and
- d. Creditors who are spouses of the debtor.

As a general rule under the Bankruptcy Act, distributions are made on a pro-rata basis among creditors within the same level of priority.

Under the Bankruptcy Act, equitable subordination (Section C above) only applies where provided under specific laws or contractual arrangements.

In rehabilitation proceedings, the priority and treatment of creditors' claims will be in accordance with creditor classifications set out in the rehabilitation plan. These classifications must also be in line with the order of priority for unsecured creditors as discussed in B above.

12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

The Bankruptcy Act provides mechanisms for invalidating certain transactions made prior to the filing of a petition for bankruptcy proceedings. The Official Receiver has the right to petition the Court for the cancellation or revocation of the following:

1. Any transactions for the transfer of the debtor's assets made within the three-month period preceding the filing of the bankruptcy petition, if it can be shown that the debtor intended to give an undue preference to a particular creditor(s). This period will be extended to one year if the transaction involves an insider of the debtor; or
2. Any fraudulent acts committed by the debtor. The Bankruptcy Act also presumes that transactions made within one year before the bankruptcy petition was filed, or any acts in which the debtor received less than a reasonable amount of compensation were carried out to prejudice creditors' rights to repayment. It should be noted that a petition to cancel or revoke such acts must be filed with the Court within one year from the date the act became known to the Official Receiver.

Note that a request for the cancellation or revocation of

acts or transactions under the Bankruptcy Act will not impact the rights of third parties who purchased the assets in good faith and for fair value before the commencement of bankruptcy proceedings.

In the rehabilitation proceedings, the Planner and the Plan Administrator also have identical rights, similar to the Official Receiver.

13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

For bankruptcy proceedings, a debtor under the bankruptcy proceedings will generally be required to comply with all contractual commitments. The termination, retention of title, and set-off provisions remain fully enforceable, provided that the parties follow the relevant provisions of the Bankruptcy Act. In addition, the Official Receiver has the authority to reject a contract if such contract is proven to involve assets or contractual rights that are more "onerous" than beneficial to the debtor, provided such rejection is made within 3 months from the date that the Official Receiver became aware of such contract.

For rehabilitation proceedings, existing contractual rights also remain fully effective and enforceable, including provisions related to termination, retention of title, and set-off (provided the parties comply with the relevant provisions under the Bankruptcy Act) except for specific contracts involving public utilities (such as electricity, water supply, and telephone services) which service providers are not allowed to terminate. Similar to bankruptcy proceedings, the Plan Administrator has the authority to disclaim onerous rights and contracts (as specified in the rehabilitation plan) within 2 months from the date the Court approves such plan.

14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

For bankruptcy proceedings, the Official Receiver will generally realize assets of the distressed debtor through a public auction. Other sales techniques that appear to be predominantly more convenient and beneficial to the creditors, such as pre-negotiated transactions, can also be used if the creditors' committee approves such techniques. Assets will be sold in an "as-is" condition, free of claims or liabilities. Without the consent of the creditors, security cannot be released. The options available to secured creditors are detailed in item 2 above. There are no limitations on the creditors' ability to bid or participate in a public auction. Pre-packaged sales require the creditors' approval.

For the sale of assets under rehabilitation proceedings, the methodology will be included in the rehabilitation plan, unless the permission for a sale of assets prior to the approval of the rehabilitation plan is granted by the Court.

15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

A director is responsible for managing the company with the care and diligence of a careful businessman. In the event that the director fails to comply with such duties and causes financial loss to the company, the company or its shareholders can bring a claim against the director for damages. In addition, the director who fails to act in good faith and in the best interests of the company may also be held criminally liable under the Thai Penal Code or the Corporate Offences Act. These principles remain applicable to the directors even after the authority to manage the debtor's businesses and assets is vested upon other bodies during bankruptcy or rehabilitation proceedings, as the case may be.

Under the Bankruptcy Act, a debtor's director or executive has a duty to provide material information concerning the business operations or assets of the debtor to the Court, the Official Receiver, the Planner and the Plan Administrator, and notify the Official Receiver if he or she becomes aware that someone has used a bogus debt to file an application for debt repayment.

The Bankruptcy Act also establishes liability for the Planner and the Plan Administrator if they fail to adhere

to their duties under the rehabilitation proceedings and cause damage to the debtor.

In addition, other parties can also be held liable to the company for any damage for which they are personally responsible. Thai courts do not actively apply the concept of piercing the corporate veil. Therefore, shareholder liability is generally separate from the liability of the company and is strictly limited to the full payment of the subscribed shares in the dissenting company. Under the Thai Civil and Commercial Code, partners or For example, unlimited liability partner(s) in a registered ordinary partnership enterprise or managing partner(s) in a limited partnership enterprise can be held personally liable alongside the enterprise.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

The directors will not be released from liability arising from their past actions or decisions, even as a result of bankruptcy or rehabilitation proceedings.

17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

Neither bankruptcy nor rehabilitation proceedings initiated under the laws of other countries are recognized in Thailand and such proceedings will have no effect upon debtor's assets located in Thailand.

Thailand has not adopted the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on the Recognition and Enforcement of Insolvency-Related Judgments. The Thai government, through the Ministry of Justice's Legal Execution Department, is currently studying the potential impact of implementing the relevant principles of the Model Law on local bankruptcy and rehabilitation laws. However, we do not expect them

to be enacted or adopted in the near future.

18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

[Not applicable for Thailand]

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Foreign debtors incorporated outside Thailand but operating a business in Thailand, either directly or through representatives, at the time of filing the petition for bankruptcy proceedings, or within one year prior to filing the petition for bankruptcy proceedings, may be subject to bankruptcy proceedings in Thailand. However, it should be noted that a debtor is not allowed to commence voluntary bankruptcy proceedings on its own; such proceedings must be initiated either by a liquidator or a creditor(s).

Rehabilitation proceedings are not available to foreign debtors, but only available to certain domestic debtors, as defined under the Bankruptcy Act.

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

There are no specific bankruptcy or rehabilitation regimes applicable to groups of companies. Current proceedings involving certain debtor entities within a corporate group do not affect the other entities in the corporate group or the corporate group as a whole. Each debtor in the group has to file for bankruptcy or rehabilitation proceedings independently.

21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Thailand is not actively considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency and has not taken any formal steps in that direction.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

In recent years, the Legal Execution Department has introduced a proposal to amend the rehabilitation proceedings regime under the Bankruptcy Act. The proposed changes would make expedited rehabilitation proceedings available to both corporate debtors and SMEs. This proposed amendment also aims to establish clear mechanisms for a pre-packaged rehabilitation system (similar to Chapter 11 of the United States Code).

As of the time of writing (June 2025), the proposal is under review and study by the House of Representatives. While this demonstrates progress in the effort to reform the Bankruptcy Act, significant steps remain before any changes are enacted or adopted. At this stage, the reforms are not expected to be implemented in the near future.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

Under bankruptcy proceedings, the Bankruptcy Act imposes several requirements on debtors to ameliorate their insolvent status, whereas, in general, creditors are only required to file a debt repayment application and await their portion of repayment from the asset realization process overseen by the Official Receiver.

Conversely, Thailand's rehabilitation proceedings are widely regarded as pro-debtor, as they equip the debtor with a number of protections and remedies that enable them to "skip town", and escape from the distress due to the following key features: (i) the Bankruptcy Act provides a sweeping protection that grants the debtor "breathing room" from creditor pressure and prevents multiple creditors from initiating individual claims in court; (ii) a rehabilitation plan can be freely drafted by the debtor to the extent that the total interests of the creditors in the rehabilitation proceedings (after any cram-down) are not lower than the liquidation value in the bankruptcy proceedings. The rehabilitation plan can also be utilized to unilaterally restructure contractual arrangements; and

(iii) the Bankruptcy Act allows the debtor to re-evaluate its ongoing contractual obligations and disclaim assets or contractual rights where the debtor's burdens exceed the benefits to be obtained by the debtor as part of the rehabilitation plan.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

From time to time, sociopolitical events, and broader social contexts (for example, the global financial crisis) can influence the outcome of the proceedings, and in some cases, public interest considerations prevail.

The Bankruptcy Act provides no explicit measures for government assistance to insolvent enterprises. As for the affected employees, the state-owned Social Security Office and the Ministry of Labor play a vital role in providing assistance to those who are made redundant.

For rehabilitation proceedings, debtors operating certain forms of businesses (e.g., commercial banks, finance companies, finance and securities companies, and insurance companies) must obtain written approval from the state agency responsible for overseeing the operation of the debtor, prior to filing a petition.

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Time constraints and the insufficient number of Official Receivers (compared to the volume of insolvency cases handled) who will be handling the debt investigation process under bankruptcy and rehabilitation proceedings are often the greatest barriers that hinder the efficiency of Thai bankruptcy and rehabilitation proceedings.

In addition, proceedings in Thailand are open-ended by their very nature, generally due to the following reasons:

1. Each creditor's application for debt repayment can be promptly challenged by the debtor or other creditors. If the application is challenged, the Official Receiver must conduct a separate examination for each challenge raised before issuing the order. This

process is highly time-consuming, as Official Receivers are overwhelmed and understaffed due to the continuing growth of insolvency cases in Thailand; and

2. If a stakeholder who filed a challenge disagrees with the Official Receiver's order, they can file an appeal with the Court in separate proceedings (distinct from the main bankruptcy or rehabilitation proceedings) as subordinate proceedings, in which witness examinations will also be conducted separately by the Court irrespective of the proceedings which have taken place earlier during the debt investigation

process of the Official Receiver.

Since 2023, the Act on the Timeframe of Judicial Proceedings has been enacted in an effort to establish clearer timeframes for legal proceedings and to improve the efficiency of judicial administration, including all judicial bodies, e.g., the Court and the Official Receiver that are responsible for insolvency matters. While no clear positive outcomes have been observed to date, it should be noted that this Act is relatively new, and its practical impact on reducing the time-related barriers in Thailand remains to be seen.

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