



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **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?

Major forms of security under Thai law granted over property are mortgages, pledges and business security.

#### Mortgages

A mortgage is a non-possessory security whereby the mortgagor places property subject to a mortgagee as security for the performance of an obligation without delivering the property to the mortgagee. A mortgage can be established over immovable property (e.g., land and buildings) or certain movable property, such as movable property that may be registered under relevant laws (e.g., machinery). A mortgage agreement must be made in writing and registered with the competent official(s), e.g. local Land Office for land and building mortgages or the Central Machinery Office for machinery mortgages. Failure to comply with the formality requirements will render the mortgage agreement void and unenforceable.

#### Pledges

A pledge is a possessory security whereby a pledgor delivers to the pledgee pledged property as security for performance of an obligation. Certain assets representing value such as shares, bills of exchange, promissory notes and cheques can also be pledged by delivery of the document of the title or right to the pledgee. A pledge is not required to be registered with a governmental body. To perfect a pledge, pledged property must be delivered by the pledgor to the pledgee. If 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, a share certificate must be delivered to a pledgee to perfect the pledge. For a share pledge to be valid against a company and third parties, a record of the pledge along

with the name and an address of a pledgee must be registered in the share register book of the company. Absence of a record of a pledge in the share register book of the company will not void the pledge but will result in a creditor not being able to claim 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 Thailand Securities Depository Co., Ltd.

#### Business Security

A business security is a non-possessory security whereby the security provider places certain types of assets with a security receiver for the performance of an obligation. Assets that can be registered as business security comprise of: (i) business (property used by the security provider in its 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 for 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 ranked 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 enforcement of a mortgage is through public auction. A mortgagee may also elect to foreclose on mortgaged property if criteria set out by law are met. Both enforcement methods require judicial enforcement which is extremely time-consuming, resulting in debtors and creditors unable to close out defaulting debts, instead incurring ongoing expenses coupled with default interest which normally accrues on a daily basis.

There is also an option for out-of-court enforcement, where a mortgagor can initiate the enforcement process at any time after the obligation falls due, provided there is no other preferential right over the mortgaged property other than the rights of mortgagee. In such case, the mortgagor is required to deliver a notice to the mortgagee, requesting a public auction procedure without having to submit the case to court. The mortgagee must then proceed with the public auction procedure within one year from receiving the notice. While out-of-court enforcement may be considered the preferable option for parties in terms of flexibility and timing, it can raise uncertainties from the mortgagee's perspective due to the lack of specific authority overseeing this enforcement method, in which cases the mortgagee has to ensure on its own that the processes are correctly performed or that the enforcement will not be subject to cancellation. Consequently, out-of-court enforcement is not widely implemented in practice.

### **Enforcement of business security**

Enforcement of business security may be done out-of-court if the security provider cooperates with the security recipient in handing possession of the secured assets. In practice, the method of enforcement of business security in the types of business and claims remains unclear. For instance, in the case of 'business', how the security receiver can step into the security provider's position and resume business operation, or in a case of 'claims', how the security receiver can become a party that has a claim against the other third parties especially when claims are derived from contractual arrangements or agreements and such agreements have non-assignment or non-transfer provisions where a change of party is prohibited. We are not aware of any precedent case of enforcement of business security over an entire business or claims.

### **Right of secured creditor in bankruptcy proceedings**

In bankruptcy proceedings, secured creditors have the option to file an application for debt repayment or exercise their rights over secured assets. In the latter scenario, the secured creditor 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 proceed to seize and sell the assets. The proceeds derived from the sale will be used to repay the debts owed to the secured creditor and other creditors, respectively. 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 a separate enforcement proceeding 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 any deficiency.

On the other hand, if a secured creditor decides to file an application for debt repayment, even though it is required to relinquish their rights over the secured asset, the creditor is still eligible to receive any deficiency if the proceeds from the enforcement of the waived secured asset are unable to fully satisfy its obligations.

Given that the secured creditor is required to elect either one of the above options, rights of secured creditors in bankruptcy proceedings are quite limited and still further subject to the Official Receiver's discretion which may lead to uncertainty in terms of the outcome of the enforcement proceedings.

### **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, restructuring proceedings through the court, known as rehabilitation proceedings, are available legal rescues for financially-distressed debtors. Rehabilitation proceedings can be initiated (either by the debtor or the creditor) by way of submission of a petition for rehabilitation ("**Petition**") with the Bankruptcy Court ("**Court**") if it appears that the debtor is insolvent or unable to pay debts as scheduled and is indebted to one or more creditors for a definite amount of not less than Thai Baht 10 million, regardless of whether such debt has become due or not, and that there are reasonable grounds and the possibility to rehabilitate the debtor's business.

A moratorium in the form of an automatic stay will be effective upon acceptance of the petition for

rehabilitation by the Court and throughout the rehabilitation 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 whereby the debtor shall not dispose of, distribute, transfer, let, pay debt, create debt or do any act which creates encumbrances over the asset except where such act is necessary for the purpose of ordinary course of business or otherwise granted by the Court.

During the period from acceptance of the Petition to the rehabilitation order and appointment of the Planner granted by the Court, the authority of the management stays intact with the debtor. The debtor still has the power to manage its business and assets with restrictions imposed by the automatic stay. Once the Planner is appointed, such authority shall be vested into the Planner for only the period and main purpose of preparing the draft rehabilitation plan.

Once the creditors' meeting adopts a resolution approving the rehabilitation plan as proposed by the Planner, with the Court's confirmation and agreement of such rehabilitation plan, the Court will issue an order to approve the rehabilitation plan. Once the Court issues its approval, all powers and duties to management of the debtor's business and assets shall be vested from the Planner to the Plan Administrator, who will then carry out the approved rehabilitation plan.

Amongst the number of stakeholders involved, the Court can play a significant role in monitoring and supervising the rehabilitation proceedings, as the Court is required to consider and approve essential matters (e.g., appointment of the Planner, approval of the rehabilitation plan and approval for entering any significant transactions that influence the debtor's assets etc.). The Official Receiver can also play a significant role in giving the Court its opinion 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 this case, creditors who inject new funds are entitled to the repayment according to the terms and conditions stipulated by the rehabilitation plan, which shall generally be favourable terms in exchange for granting new financing during the distressed time. If the

Plan Administrator obtains new financing after the Court has approved the rehabilitation plan, the financial provider, for such injected amount, shall not be subject to the automatic stay and can enforce their rights when the debt matures without having to file a claim for repayment under the rehabilitation proceedings.

#### **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 do not have the effect of altering liabilities or releasing claims against non-debtor parties. *Vice versa*, rehabilitation proceedings do not render such non-debtor parties to be liable for any debt created under the approved 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, creditors would absorb all fees and costs incurred for participating in the rehabilitation proceedings; but in some circumstances, those fees and costs can be covered by the debtor and are claimable subject to the contractual obligations stipulated in the relevant agreement between the parties.

#### **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 ("**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 is available for bankruptcy proceedings, and both an insolvency test and liquidity test are available in rehabilitation proceedings. In regard to rehabilitation proceedings, only one of the two tests is required to be proven satisfactorily before the Court to commence proceedings. Details of the insolvency and

liquidity tests are as follows:

- **Insolvency Test.** The debtor satisfies the insolvency test if the debtor's assets are insufficient compared to its liabilities. The Bankruptcy Act contains a list of acts by a debtor that create a presumption of "insolvency", such as, if a debtor transfers or delivers assets with dishonest or fraudulent intent, or when a debtor acts to prolong payment of a debt or to prevent a creditor from getting payment, etc.;
- **Liquidity Test.** This test is comparatively easier to establish. The liquidity test can be triggered even if the debtor has more assets than liabilities, if it is proven that the debtor is in financial distress causing "*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 (in neither bankruptcy nor rehabilitation proceedings) when such debtor becomes insolvent or distressed.

Notwithstanding, if a liquidator of a distressed debtor discovers during the voluntary winding up process that the total contribution or paid-up shares and assets are insufficient to meet liabilities, in such case, the liquidator is required to commence a voluntary insolvency i.e., to file for bankruptcy proceedings with the Court without delay. If the liquidator fails to do so, the Act on Offences Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations, and Foundations B.E. 2499 (1956) ("**Corporate Offences Act**") may hold the liquidator criminally liable.

### 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 the period of hearing, the debtor is still able to continue operating its business. If the Court decides that the debtor is insolvent (where the insolvency test is satisfactorily proven) after hearing evidence, an absolute receivership order will be issued against the debtor, and all the debtor's business operations will be halted. Upon

an 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 managing and disposing of the debtor's assets and the power of the debtor's management for business and assets shall be ceased.

A formal court-initiated composition before bankruptcy is also an option for preventing a debtor from being declared bankrupt. This involves a creditors' meeting and the Court approving and verifying the debtor's composition proposal. If the composition proposal is not approved, the Court has the authority to declare the debtor bankrupt. The Official Receiver will next work out and supervise the process of realizing and distributing the debtor's assets.

Under normal circumstances, these proceedings will usually take between 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 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 by following the processes set forth in the Bankruptcy Act (e.g., filing an application for debt repayment).

For rehabilitation proceedings, when the Court officially issues its order accepting the petition for rehabilitation for consideration, a moratorium (automatic stay) will commence. 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 unable to enforce their security outside of the rehabilitation proceedings.

Thailand does not recognize any insolvency or restructuring proceedings or court rulings relating to absolute receivership or an automatic stay issued under other jurisdictions' legislation. The Thai Court appears to lack tools to enforce its orders outside of Thailand. Whether the automatic stay is effective in other jurisdictions is subject to the laws and recognition of



each jurisdiction.

**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)?**

The creditors and/or other interested parties may attend the hearing and contest the merit of the petition for bankruptcy or business rehabilitation filed with the Court.

Later on, as the proceedings have moved forward, the creditors shall have the right to file a debt repayment application within the specified deadline stated in the Bankruptcy Act. They are also entitled to review debt repayment applications filed by other creditors to question the legitimacy of such applications, regulating the sharing of the assets pool.

As for the rehabilitation plan under the rehabilitation proceedings, the Planner will be responsible for drafting a rehabilitation plan, which will be submitted to the creditors' meeting for approval. Subsequently, the Court will assess if the draft rehabilitation plan is aligned and in compliance with the Bankruptcy Act. The Court will consider factors e.g., equitable treatment of creditors within each class, demonstrating that creditors would receive greater repayment compared to bankruptcy proceedings, and ensuring overall fairness when granting approval for the rehabilitation plan.

The rehabilitation plan, once approved by the Court, will be binding upon all creditors who are or may be entitled to the debt repayment in the rehabilitation process regardless of whether they vote for it or not. In this respect, the 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 the creditors in the following order of priority:

A. Secured creditors (only for part of secured debts);

B. Unsecured creditors of the following costs and debts:

1. Official Receiver's costs and expenses;
2. Court fees;
3. Fees of the petitioning creditor and counsel's 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 wages of the debtor's employees; and
5. Any other debts.

C. Creditors who under the law or contract are only entitled to receive repayment after other creditors have received repayment in full; and

D. A creditor who is a spouse of the debtor.

The general rule under the Bankruptcy Act is that pro-rata distributions are made to creditors in the same priority level.

Under the Bankruptcy Act, equitable subordination (Section C. above) is only applicable if it is stipulated in other specific laws or contracts.

In rehabilitation proceedings, the repayment priority and treatment shall be in accordance with the rehabilitation plan, and priority for unsecured creditors as discussed in B above shall also apply.

**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 contains provisions for the invalidation of specific transactions made prior to the filing of a petition for bankruptcy proceedings. The Official Receiver has the right to petition to the Court for the cancellation or revocation of the following:

1. Any transactions for the transfer of the debtor's assets that occurred during the three month period prior to the filing of the petition, if it has been proven that the debtor intended to give undue preference to a particular creditor(s). This period will be extended to one year if the transaction is entered into with an insider of the debtor; or
2. Any fraudulent acts done by the debtor. The Bankruptcy Act also provides the presumption

that the transaction was made within one year before the petition for bankruptcy was filed or any acts where the debtor received less than a reasonable amount of compensation were done to prejudice the creditors' rights to be repaid. It should be noted that the petition for the cancellation or revocation of acts must be filed to the Court within a one-year period from the date that 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 a fair price before the bankruptcy proceedings began.

In the rehabilitation processes, 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 rehabilitation proceedings, continuing contractual relationships 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) where the service provider is not allowed to terminate the contract. The Plan Administrator has the authority to disclaim a contract(s) within the scope of the rehabilitation plan where such contract must be proven as assets or contractual rights that are more "onerous" than the debtor's benefit.

For bankruptcy proceedings, a debtor under the bankruptcy proceedings will also generally be required to complete all contractual commitments. The termination, retention of title, and set-off provisions remain fully enforceable provided that the parties follow the relevant provision of the Bankruptcy Act. The Official Receiver has the same authority to reject onerous rights and contracts as mentioned for the rehabilitation proceedings discussed above.

**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 the bankruptcy proceedings, the Official Receiver will generally realize assets of the distressed debtor through a public auction. Other sales techniques which seem to be predominantly the most convenient and beneficial for the creditors, such as pre-negotiated sales transactions, can also be used, if the creditors' committee approves of such alternative sales techniques. The assets will be sold in an "as-is" condition, with no claims or liabilities attached. 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 are subject to the creditors' approval.

For the sale of assets under rehabilitation proceedings, the methodology will be included in the rehabilitation plan, unless the Court permits a sale of assets prior the rehabilitation plan's approval 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 to run the company with the care and diligence of a careful businessman. Failure to comply with such duties and causing a financial loss to the company, the company or its shareholders can make a claim against the director for damages. In addition, the director who fails to act in good faith and preserve the company's interests could also be held criminally liable under the Thai Penal Code or the Corporate Offences Act.

Under the Bankruptcy Act, the 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 learns that someone has used bogus debt in order to file an application for repayment of debt.

Other parties can also be held liable to the company for damage he or she is personally responsible for. Thai courts do not effectively implement the concept of piercing the corporate veil. Therefore, the liability of the shareholders is generally separate from the liability of the company and strictly limited to the full payment of subscribed shares in the dissenting company. Under the Thai Civil and Commercial Code, specifically for certain executives of certain forms of business organisations, their partners will be jointly and severally held accountable for all liabilities incurred to such business enterprise. For example, in a registered ordinary partnership enterprise, the unlimited liability partners or the managing partners in a limited partnership enterprise can be held liable.

**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 the liabilities incurred due to their previous actions and decisions, neither by the effect of the bankruptcy nor 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?**

Bankruptcy or rehabilitation proceedings initiated under the laws of other countries are not recognized in Thailand and will not affect a debtor's assets 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 is currently studying the impact of implementing relevant principles set forth in the Model Law on local bankruptcy and rehabilitation laws through the Ministry of Justice's Legal Execution Department. However, we do not expect them to be enacted or adopted anytime soon.

**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 of 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 enter the bankruptcy proceedings. However, it should be noted that under the Bankruptcy Act, a debtor is not allowed to commence the voluntary bankruptcy proceedings by itself and it must be done by a liquidator or a creditor(s).

Rehabilitation proceedings are not available for foreign debtors as they are only available to certain forms of domestic debtors, as defined by 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 with respect to groups of companies. The current proceedings of certain debtor entities in a



corporate group will not affect the other corporate group entities or the corporate group as a whole. Each debtor in the group will have to file for bankruptcy or rehabilitation on its own.

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

Thailand has taken a neutral stance on the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency.

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

### Proposal for amendment of the Bankruptcy Act by the Legal Execution Department

In the recent year, a proposal to change the rehabilitation proceedings regime under the Bankruptcy Act has been introduced by the Legal Execution Department. Expedited rehabilitation proceedings will be available under the proposed change (for both corporate debtors and SMEs). This proposed amendment also appears to have adopted a pre-packaged rehabilitation system (similar to Chapter 11 of the United States Code). The proposal is still in the stage of being reviewed and studied, and we do not expect it to be enacted or adopted anytime soon.

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

Under the bankruptcy proceedings, the Bankruptcy Act places several requirements on debtors to reduce their insolvent status, whereas in general, the creditors only need to file a debt repayment application and await their portion of repayments from the liquidation process overseen by the Official Receiver.

Conversely, Thailand's restructuring regime is widely regarded as pro-debtor that equips the debtor with a number of protections and remedies helping them to "skip town," plan, and resurrect from the distressing conditions due to the following key features: (i) the Bankruptcy Act provided a sweeping protection that affords debtors "breathing room" from pressure from their creditors and prevents multiple creditors from initiating claims individually in court; (ii) a rehabilitation plan can be freely drafted by the debtor to extend that the total interests of the creditors in the rehabilitation

proceedings (after cramped down) are not lower than liquidation value in the bankruptcy proceedings. The plan can also be utilized to unilaterally restructure the contractual arrangements; and (iii) the Bankruptcy Act allowed the debtor to re-evaluate its on-going contractual obligations and disclaim the assets or contractual rights that the debtor's burden exceeds the benefits to be derived to 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 the social backdrop (for example, the global financial crisis) influence the outcome of the proceedings, and in some cases, the public interest prevails.

Thai insolvency laws provide no explicit measures governing government assistance to insolvent enterprises. In terms of employees, the state-owned Social Security Office will play a vital role in providing financial assistance to all those who are released from employment.

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

## 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 and the insufficient number of Official Receivers (compared to the number of insolvency cases handled) are often the greatest barriers that delay the efficiency of Thai bankruptcy and rehabilitation proceedings. The proceedings in Thailand are open-ended by their very nature, which is generally caused by the following reasons:

1. Each creditor's application for debt repayment

- can be challenged. Before issuing the order, the Official Receiver must conduct an examination that will be done separately for each challenge raised. This process is very time consuming due to the overwhelmed and undermanned workload of the Official Receivers given the continuing growth of insolvency matters in Thailand; and
2. If the stakeholders who filed the challenge disagree with the Official Receiver's order, they can file an appeal with the Court in separate proceedings (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 taken place earlier during the debt investigation process of the Official Receiver.

In the beginning of 2023, the Act on the Timeframe of Judicial Proceedings was enacted with an effort to specify a clearer timeframe for the proceedings and to expedite the efficiency of the judicial administration, including all judicial bodies that are responsible for insolvency matters. It should be noted that this Act is relatively new, and we still have to wait and see if it can practically assist Thailand in lowering the time barrier as expected

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