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& Gibbins**

**BUSINESS
REHABILITATION
PROCEEDINGS
IN THAILAND**

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Business Rehabilitation Proceedings in Thailand

Overview of Rehabilitation Proceedings

The primary goal of business rehabilitation proceedings is to provide debtors who are facing insolvency with various mechanisms to address their financial difficulties. This includes restructuring their liabilities and assets while also ensuring that creditors receive repayment equal to or greater than the amount they would have received if the debtor had been declared bankrupt by the court.

Rehabilitation proceedings are governed by the Act on the Establishment of and Procedure for Bankruptcy Court B. E. 2542 and the Bankruptcy Act B.E. 2483. The Civil Procedure Code regulates any matters not governed by these two laws.

In the eyes of the Thai judiciary, rehabilitation proceedings are classified as a type of bankruptcy action—thus, the country's bankruptcy courts have jurisdiction over rehabilitation matters. Theoretically, there are two types of bankruptcy courts: the Central Bankruptcy Court and the Regional Bankruptcy Court. However, the Regional Bankruptcy Court has not yet been formally established, so the Central Bankruptcy Court is authorized to adjudicate bankruptcy cases throughout Thailand for the time being.

Appeals against judgments and orders of the Central Bankruptcy Court are made with the Bankruptcy Case Division of the Court of Appeals for Specialized Cases, with petitions for further appeal addressed to the Supreme Court.

Filing a Petition for Rehabilitation

Person Entitled to File a Petition. To initiate rehabilitation proceedings, a debtor, one or more creditors, or a relevant government authority may file a petition for rehabilitation with the court.

A creditor or group creditors entitled to file the petition must be owed a definite amount of debts of at least THB 10 million.

A debtor entitled to file a petition must be either a limited company, a public company, or another type of juristic person specified in ministerial regulations. An individual, an ordinary partnership, or a limited partnership cannot file a petition for rehabilitation according to the Bankruptcy Act B.E. 2483.

If the debtor is a bank, securities company, insurance company, or other juristic person under the supervision of the Bank of Thailand, the Office of the Securities and Exchange Commission, or the Department of Insurance, the respective authorities are authorized to file the petition for the debtor's business rehabilitation when the debtor owes at least THB 10 million to one or more creditors.

Filing Conditions. All the following conditions must be satisfied to file a petition to initiate the process of business rehabilitation:

- It must be proven that the debtor is insolvent or unable to pay the debts due for payment (cash-flow insolvency).
- The debtor is indebted to one or more creditors for a total of at least THB 10 million, irrespective of whether it is due for payment immediately or in the future.
- There must be reasonable grounds and prospects for the successful rehabilitation of the debtor's business.

Specifics of the Petition. The petition for business reorganization must clearly set out:

- The debtor's insolvency or inability to pay its debt as scheduled;
- The list and addresses of all creditors to whom the debtor is indebted alone or all together for an amount of at least THB 10 million;
- Reasonable grounds for and prospects of rehabilitating the business;
- The name and qualifications of the planner to be responsible for creating and preparing a rehabilitation plan; and
- A letter of consent from the planner.

Limitation on Initiating Rehabilitation. Business rehabilitation cannot be initiated if any of the following events have occurred:

- The court has already issued an absolute receivership order against the debtor.
- The debtor, which is a juristic person, has been dissolved or its registration has been revoked by the court, the registrar's order, or on other grounds.
- In the six months prior to the submission of the petition for rehabilitation, the court has previously dismissed a rehabilitation petition or canceled a rehabilitation order or rehabilitation proceedings in relation to the debtor's business.

If a temporary receivership order has been issued against the debtor's assets, or if the debtor is facing a filed bankruptcy action but has not yet been judged bankrupt by the court, a petition to initiate rehabilitation of the debtor's business can still be filed.

Court Acceptance of the Petition. The Central Bankruptcy Court holds jurisdiction over the rehabilitation proceedings. However, the petition for rehabilitation can be submitted either to the Central Bankruptcy Court or the Provincial Court that holds jurisdiction over the debtor's domicile or the place where the debtor's business is operated. In the latter case, the Provincial Court is then responsible for forwarding the petition for rehabilitation to the Central Bankruptcy Court for consideration of whether to accept the petition.

Court Order to Dismiss the Case. If the petitioner abandons its petition, misses an appointment, or has its request to withdraw the rehabilitation petition approved by the court, the court will notify both the creditor and debtor through a daily newspaper for at least seven days. If no one submits a crossclaim to act as a replacement for the party, the court may dismiss the case.

Acceptance of a Rehabilitation Petition

Rehabilitation Hearing. Up until three days before the date of the first hearing, the debtor or any

creditor may challenge the petition for rehabilitation on the grounds of nonfulfillment of the filing conditions (mentioned above) or unsuitability of the proposed planner. Both the petitioner and the challenger are obliged to be present at the court hearing, after which the Central Bankruptcy Court may either dismiss or approve the petition.

When considering whether to accept the rehabilitation petition, the court may dismiss the petition if the filing conditions under the Bankruptcy Act have not been fulfilled or the petition has been filed illicitly.

Announcement of the Petition and Notification of Creditors. If a petition for rehabilitation is accepted, it will be announced along with the scheduled date and time for the hearing in a daily newspaper to inform the creditors. The Central Bankruptcy Court will also order copies of the petition to be delivered to all the creditors listed in the petition.

Automatic Stay. Acceptance of a rehabilitation petition by the Central Bankruptcy Court initiates an automatic injunction called the “automatic stay.” This injunction, which requires no further court orders, aims to maintain the debtor's ordinary business operations during the rehabilitation process by preventing creditors from pursuing action against the debtor or the debtor's property. Any such actions against the debtor during the automatic stay will not be binding or enforceable upon the debtor. The automatic stay comes into immediate effect the moment the rehabilitation petition is accepted by the court and lasts until the expiration of the period for implementation of the plan, the successful accomplishment of the plan, the dismissal of the petition, the disposal of the case, revocation of the order for business rehabilitation, cancellation of the business rehabilitation by the court, or the debtor being under absolute receivership.

Relief from Stay. Any creditors or persons aggrieved by a restriction resulting from the automatic stay may file a petition to request that the restrictions be amended or inapplicable against them. The court may approve the petition if the court deems that:

- The restriction is unnecessary for the business rehabilitation; or
- There is insufficient protection for the rights of secured creditors. In this case, the court may allow such secured creditors to execute the secured assets or may order a corrective action to ensure sufficient protection for the secured creditors.

Contrary to the general binding effect of the automatic stay, the relief from the automatic stay only applies to the specific person who submitted the petition for relief from the stay.

Commencement of the Rehabilitation Proceedings

Appointment of a Planner. The planner is a person or entity responsible for creating and preparing a rehabilitation plan for a debtor's business. The planner may be an individual, a juristic person, a group of people, the debtor, or executives of the debtor. The planner must be nominated in the petition for rehabilitation and appointed by the court. After the appointment of the planner, the managerial power of the debtor's executives will be transferred to the planner.

If the Central Bankruptcy Court finds that all the filing conditions have been satisfied, the court will order the rehabilitation process to commence, which then suspends the powers and duties of the debtor's executives in the management of business and property until the end of the rehabilitation process (i.e., when the court revokes the rehabilitation order or proceedings).

The court may appoint the person nominated in the rehabilitation petition to plan and administer the business rehabilitation. However, if the court deems the nominated person unsuitable or the nominated person is successfully opposed by a creditor or the debtor, the court will order the receiver¹ to summon a meeting of creditors to elect the planner.

Creditors eligible to vote in the meeting are those whose juristic relationship with the debtor was established before the court issued the rehabilitation order and who were able to file a debt repayment application in the rehabilitation proceedings, irrespective of whether it is due for immediate payment.

If the debtor does not nominate a planner, a resolution on election of the planner must be approved by the voting creditors who are owed a majority of the total debt of the creditors who cast their vote on the resolution.

If the debtor nominates a planner, the nominated planner will be appointed unless another person is chosen as the planner by a resolution of creditors who are owed at least two-thirds of the total debts of the creditors who cast their vote on the resolution.

The court may designate one or more interim executives responsible for managing the debtor's business and assets, under the supervision of the receiver, until the planner has been appointed.

Filing a Debt Repayment Application. Every creditor, including the judgment creditor and any creditors who have already filed a civil action against the debtor, has one month from the date of the publication of the planner's appointment in Thailand's *Government Gazette* to file a debt repayment application in the rehabilitation proceedings. Creditors who fail to do so will forfeit the right to repayment, regardless of the success of the rehabilitation unless the plan states otherwise or the court issues an order to cancel the business rehabilitation order.

Debts that qualify for debt repayment are those that existed before the rehabilitation order, irrespective of whether they are due for immediate payment. The debt repayment application can also specify damages, default interest, and any other payments stipulated in the relevant contracts. Other creditors, the debtor, and the planner may verify and object to any debt repayment application to the receiver within 14 days from the expiry of the period for the debt repayment application submission.

When there is an objection to a debt repayment application, the receiver will investigate the matter and issue approval, partial approval, or dismissal of the application. Any objections to the orders issued by the receiver may be filed with the court within 14 days of acknowledgment of the issued order. Approving the debt repayment does not guarantee that the creditor will receive the exact amount approved. The amount received will depend on the classification of the creditor and the allocation of debt repayment as per the rehabilitation plan. The order of the receiver can also be challenged by an interested person, who may file a petition for objection with the court within 14 days from the date of acknowledging the receiver's order.

Foreign Creditors. Every creditor must be notified of the appointment of the planner—this includes

¹ The receiver is a government official who manages meetings and claims for payment. The receiver takes over the debtor's business and supervises the plan administrator during plan implementation. If the planner or administrator is absent, the receiver assumes their responsibilities.

foreign creditors or creditors whose place of domicile is outside of Thailand. Foreign creditors are entitled to file for debt repayment in the same manner as domestic creditors.

Property and Business Management. The Bankruptcy Act B.E. 2483 outlines the following mechanisms to collect funds to allow creditors to receive the greatest amount of repayment from the debtor.

- **Demand for repayment:** The planner, plan administrator, or receiver may petition the court to order persons having admitted their indebtedness to the debtor or their possession of the debtor's property to make repayment or deliver the property.
- **Cancellation of fraudulent acts:** The planner, plan administrator, or receiver may petition the court to cancel a fraudulent transaction that the debtor made knowing that it would prejudice creditors from receiving repayment.
- **Presumption of deliberately prejudicing creditors:** It will be presumed that both the debtor and the person enriched by a juristic act knew that it would prejudice creditors if the act is subject to a petition for cancellation due to being a fraudulent act arising no more than one year before the filing date of the petition, is a gratuitous act, or is an act in which the debtor received compensation in an amount less than appropriate.
- **Cancellation of biased acts:** The planner, plan administrator, or receiver may petition the court to cancel an act carried out by the debtor during the period from three months before the filing of the petition for rehabilitation or thereafter with the intention of providing a preferential advantage to any creditor over the others.
- **Refusal to accept the debtor's property or contractual rights:** During the two months following the date of the plan administrator's acknowledgment of the court's approval of the plan, the plan administrator has the authority to reject any of the debtor's property or contractual rights that impose an unreasonably greater burden than the benefit they yield as specified in the plan.

Preparation of the Rehabilitation Plan. The Bankruptcy Act B.E. 2483 sets forth the following particulars to be included in the rehabilitation plan:

- The reasons for business rehabilitation;
- Details concerning the debtor's assets, liabilities, and other binding obligations at the time the court ordered business rehabilitation;
- Principles and methods of business rehabilitation;
- Redemption of collateral when there are secured creditors and liabilities of a guarantor;
- Ways to solve problems stemming from a temporary lack of liquidity during plan implementation;
- Action to be taken when a claim or debt is assigned;
- Name, qualifications, and letter of consent of the plan administrator as well as information on compensation;
- Appointment and release of the plan administrator;²

² The primary responsibility of the plan administrator is to oversee the debtor's business and assets in accordance with the business reorganization plan. The plan outlines the administrator's appointment, qualifications, tenure, and compensation, with their duties

- Period in which the plan will be implemented (maximum five years); and
- Refusal of the debtor's assets or refusal of contractual rights if the assets of the debtor or contractual rights have obligations that exceed the benefits they yield.

Classification of creditors. The creditors are classified into the following groups:

- Secured creditors with secured debts of no less than 15% of the total debts;
- Other secured creditors not included above;
- Unsecured creditors (who can be classified into multiple groups); and
- Preferred creditors according to the relevant provisions of the Bankruptcy Act.

Any creditor that disagrees with its classification based on the criteria mentioned above may file a petition with the court within seven days of acknowledging the classification. The court will then schedule a hearing and promptly reclassify the creditor as necessary.

Creditors' Meeting for Approval of the Plan. After the court's appointment of the planner is announced in the *Government Gazette*, the planner will proceed with drafting the plan. The rehabilitation plan must be completed and submitted to the official receiver within three months, with the possibility of two one-month extensions. In addition, a copy of the plan must be sent to all involved parties. Once the plan is received, a meeting of creditors will be called to discuss whether to accept or revise the plan. To suggest a revision, a creditor, the debtor, or the planner may submit an application to the receiver at least three days prior to the meeting.

Plan approval by creditors' meeting. The resolution approving the plan must be accomplished through one of the following:

- Every group of creditors that was not deemed to have approved the plan under the relevant provisions of the Bankruptcy Act must reach a resolution; within each group, a majority of creditors must approve the plan. The total amount of debts owed to these creditors must be at least two-thirds of the total debts owed to all creditors who attend the meeting and vote on the resolution.
- Alternatively, at least one group of creditors that was not deemed to have approved the plan under the relevant provisions of the Bankruptcy Act must reach a resolution that is approved by a majority of the creditors. The total amount of debts owed to the creditors within that group must be at least two-thirds of the total debts owed to all creditors who attend the meeting and vote on the resolution in that group. In addition, the resolution of any other creditors' groups meeting must be approved by creditors holding over 50% of the debt owed to creditors attending the meeting.

Court's Acceptance of the Rehabilitation Plan. Once the plan is approved by the creditors, it must be approved by the court for the plan to become enforceable. To determine whether to accept it, the court will review the process leading up to the creditors' approval, resolutions of the creditors, the interests of all parties involved, and the relevant conditions for approving the plan.

At this stage, any creditors who are entitled to vote and did not approve the plan may raise an objection asking the court to not accept the plan—for example, on grounds of illicit procedures or

beginning upon court approval of the plan.

conditions leading to the resolution of the creditors. The debtor may similarly object to the plan at this point.

Court's Dismissal of the Rehabilitation Plan. The court may dismiss the plan based on one of the following grounds at different stages of the proceedings as follows:

- Upon receiving the creditors' resolution, the court may dismiss the rehabilitation petition if the plan was not approved by the creditors' meeting or the meeting was not attended by the creditors.
- When considering whether to accept the rehabilitation plan, the court has the discretion to decide whether to accept the plan approved by the creditors' meeting. If the plan is not approved by the court, the rehabilitation petition will be dismissed. If a bankruptcy action has been instituted against the debtor and the court deems it appropriate to adjudge the debtor bankrupt, the court may order the resumption of bankruptcy proceedings after dismissal of the petition.

Implementation of the Rehabilitation Plan. Creditors may select three to seven creditors to form a committee responsible for monitoring the plan implementation. Committee members must be appointed from the group of creditors, or those assigned by the creditors to act on their behalf. Each creditor may have only one representative.

Court's Termination of the Rehabilitation Order. After the plan has been implemented successfully, termination of the rehabilitation process may be initiated by the executives of the debtor, the plan administrator, or the receiver by filing a petition with the court. If the court agrees that the rehabilitation was accomplished in compliance with the plan, the court will issue an order to terminate the rehabilitation process. At that point, the automatic stay will no longer be effective and the debtor will be discharged from all debts unless otherwise provided for in the plan. The debtor's executives will be able to resume managing their business without any further supervision from the court or the official receiver. The rights of the debtor's stakeholders will also be reinstated.

End of Rehabilitation Case

After the court accepts a rehabilitation petition for consideration, rehabilitation proceedings may be closed by one of the following actions:

- **Court's cancellation of the rehabilitation order:** After issuance of the rehabilitation order, the court may cancel the order based on the following grounds:
 - Failure of the petitioner to appoint a substitute petitioner or to deposit additional funds as security;
 - Failure to appoint a planner through a creditors' meeting or by the court's approval;
 - Failure to revise the plan and appoint a new planner;
 - Failure to obtain approval of the plan from a creditors' meeting; or
 - The court's disapproval of the plan.
- **Absolute receivership during rehabilitation proceedings:** The court may decide to order absolute receivership after one of the following occurrences:
 - Failure to appoint a new plan administrator after two creditors' meetings have been held; or

- Failure to implement the plan successfully after expiry of the period for the plan's implementation.

Appeals

Appeal to the Court of Appeals. Within one month of the judgment being rendered, appeals may be made to the Court of Appeals for Specialized Cases, which will only entertain the following types of appeals:

- **Appeal by right:** The Act on the Establishment of and Procedure for Bankruptcy Court B.E. 2542 prohibits appeals of judgments or orders of the Central Bankruptcy Court, except for appeals of the following:
 - Judgments dismissing a case or petition to declare a debtor bankrupt;
 - Orders dismissing a rehabilitation petition;
 - Orders approving or disapproving repayment to the creditor;
 - Orders of absolute receivership; or
 - Judgments or orders in civil cases related to bankruptcy law.
- **Appeal by leave:** Appeals that are not covered under the types of appeal that can be made to the Court of Appeals for Specialized Cases may be submitted along with a petition to appeal to the Central Bankruptcy Court. If the Central Bankruptcy Court deems the appeal prohibited, the appeal and the petition will be forwarded to the Court of Appeals for Specialized Cases to decide whether to accept the appeal.

If the party does not submit the petition requesting permission to appeal along with the appeal to the Central Bankruptcy Court and the Central Bankruptcy Court considers the appeal to be prohibited, the party can still file the petition requesting permission to appeal within 15 days of the Central Bankruptcy Court rejecting the appeal.

Appeal to the Supreme Court. To appeal to the Supreme Court, a party must file a petition to appeal within one month of the judgment on the appeal being entered by the Court of Appeals for Specialized Cases. Whether to accept the appeal is under the full discretion of the Supreme Court.

Business Rehabilitation Procedures for SMEs

The Bankruptcy Act (No.9) B.E. 2559 (2016) established a mechanism for rehabilitating small and medium enterprises (SMEs) using a "prepacked plan" method. This method allows debtors or creditors to submit a petition for rehabilitation, along with a rehabilitation plan that has been approved by both parties. This process increases the predictability of the plan's approval, which then expedites the rehabilitation process and enables it to be completed in 30-45 days.

Requirements. To apply for business rehabilitation of an SME, one of the following three requirements must be met:

1. **Debtor's qualifications:** Debtors qualified to participate in this type of rehabilitation proceedings must either be unable to pay the debt arising from business operations or be one of the following:
 - An individual with a definite debt of at least THB 2 million.

- A group of individuals, an unregistered partnership, a registered partnership, a limited partnership, or any other type of legal entity as specified in ministerial regulations. This party must be registered with the Office of Small and Medium Enterprises Promotion or other relevant government agency in compliance with the SME Promotion Act B.E. 2543 (2000) and must have a definite debt of at least THB 3 million.
- A limited company registered with the Office of Small and Medium Enterprises Promotion or other relevant government agency in compliance with the SME Promotion Act B.E. 2543 (2000) with a definite debt of THB 3–10 million, regardless of whether the debt is due.

2. Grounds: There must be reasonable grounds and prospects for rehabilitating the debtor's business.

3. Inability of the debtor to pay debt: A debtor is considered unable to pay all of its debt if any of the following are true:

- The debtor does not have enough assets to cover its liabilities;
- The debtor fails to make a payment on its debt by the due date and 30 days after receiving a demand letter from a creditor;
- The debtor has no assets that the court can seize to pay a debt, or the debtor has insufficient assets to pay a debt even after the creditor requests legal action against the debtor;
- The debtor has defaulted on payments to any creditor, and the circumstances suggest that the debtor may default on payments to other creditors; or
- The debtor's cash flow is not sufficient to cover its debt.

Closing Comments

This article aims to simplify and clarify the complexities of the business rehabilitation process in Thailand. We hope that this article sheds light on the legal and practical aspects of rehabilitation proceedings and helps to expand your knowledge about the process.

This article was prepared by Panchaya Rattanaumnuaishai, associate, and Chusert Supasitthumrong, partner and director of Tilleke & Gibbins' dispute resolution department in Thailand.

If you have additional comments or questions, please contact Chusert Supasitthumrong at chusert.s@tilleke.com.



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