



**COUNTRY
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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?

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 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

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 (e.g. timing issues, requirement for court involvement)?

Mortgage enforcement methods

A general method for enforcement of a mortgage is through public auction, which requires judicial enforcement. Prior to enforcement, a creditor must provide notification demanding the debtor perform their obligations at least 60 days in advance. If the debtor fails to perform their obligations, the creditor can enter an action in court for a judgment ordering the mortgaged property to be seized and sold by public auction. If a mortgage is established by a party who is not the debtor of the secured obligation (a third-party mortgagor), the mortgagee must also send notification in writing to the third-party mortgagor within 15 days of providing notice to the debtor. As a result, several processes must be performed before actual enforcement takes place, which means that enforcement of a mortgage through public auction is time-consuming.

Foreclosure of mortgaged property by the mortgagee can be used as an alternative method for enforcement of a mortgage. If there is no other mortgage or preferential rights registered over the mortgaged property, and if: (i) the debtor has failed to pay interest for five years; and (ii) the mortgagee has proven to the court's satisfaction that the value of the property is less than the amount due, the mortgagee is entitled to foreclose on the mortgaged property. However, due to the difficulties in fulfilling these requirements, foreclosure is not common in practice.

Liability for a deficiency in the case that the proceeds of the enforcement of a mortgage do not cover all obligations

The debtor, as mortgagor, is not liable for a shortfall even though a sale proceeds of a mortgaged property are inadequate to pay the whole amount of debt, unless the parties agree otherwise. A third-party mortgagor is not liable for a shortfall, and any agreement that holds such mortgagor liable for a shortfall or liable as a guarantor, whether specified in a mortgage agreement or as a standalone agreement, is invalid. Note that such restrictions are saved for cases where a debtor is a juristic person, and its authorized manager mortgages his property to secure obligations of such debtor and executes a separate guarantee.

Enforcement of business security over business and claims

As mentioned in item 1, assets that can be registered as business security include, among others, business and claims. In practice, how the enforcement of business security of such types of assets 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.

3. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures 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**"). Formal judicial actions at the Bankruptcy Court ("**Court**") are used to start restructuring proceedings (also known as rehabilitation proceedings) and insolvency proceedings (also known as bankruptcy 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 debtor corporations are required or obliged to commence insolvency proceedings (in neither bankruptcy nor rehabilitation proceedings) when such debtor corporation becomes insolvent or distressed.

Note that, if a determination is made that the total contribution or paid-up shares and assets are insufficient to meet liabilities, a liquidator of a dissolved debtor is required to commence a voluntary insolvency. The liquidator must file a request for bankruptcy proceedings against the dissolved debtor without delay with the Court. 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.

4. What insolvency procedures 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. 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, an 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.

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 conditions, these proceedings will usually take between 12 and 18 months to complete.

5. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the

claims of any class of creditor be subordinated (e.g. equitable subordination)?

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.

6. 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 bankruptcy petition. 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 during the period of three months before the petition was filed, 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 provided that the petition must be filed to the Court within a one-year period from the date that the act became known to the official receiver. The Bankruptcy Act also provides the presumption that the transaction is 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.

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.

7. 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 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. Enforcement will be based on reciprocal agreements between Thailand and the countries in question. Thailand is not currently a party to any reciprocal agreements with other nations for this purpose.

8. 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?

Restructuring proceedings under the Thai legal framework are known as rehabilitation proceedings, which are a court-supervised official endeavor to rehabilitate a distressed debtor. Rehabilitation proceedings can be initiated (either by the debtor or the creditor) in the case it appears that a 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 is due immediately or not, and that there are reasonable grounds and the possibility to rehabilitate the debtor's business.

Throughout the rehabilitation processes, a moratorium in the form of an automatic stay will be in place, allowing the debtor to continue operating its business as a going concern. Unless otherwise directed by the Court with whom the petition is filed, the debtor may not dispose of, distribute, transfer, let, pay debt, generate debt, or undertake any act that causes encumbrances on the debtor's asset unless it is essential for the debtor to carry on his business as usual. The authority of the management stays intact once the Court accepts the petition. However, if a Planner has not yet been appointed after the Court's order for rehabilitation of debtor's business, an interim executive will be appointed to manage the debtor's business and assets (under the supervision of the Official Receiver) until a Planner is appointed, at which point the Planner will take over the powers and duties from the interim executive and prepare the business 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 Court issues its approval, the Planner will hand over control of the debtor's business to the Plan Administrator, who will

then carry out the approved rehabilitation plan.

The Court can play a significant role in monitoring and supervising in 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 have an effect on 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 plan.

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

Generally, when necessary and allowed under the rehabilitation plan, it is possible to secure new financing. In this case, creditors that inject new funds are entitled to repayment according to the timeframes stipulated by rehabilitation plan. If the Plan Administrator obtains new financing after the Court has approved the rehabilitation plan, the financing provider for that amount is not 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.

10. 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. 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.

11. Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities do they have? Are they permitted to retain advisers and, if so, how are they funded?

Yes, in rehabilitation of large debtor corporations, the creditors' meeting is expected to pass a resolution appointing a creditor committee to oversee the Plan

Administrator's performance and implementation of the approved rehabilitation plan.

A creditors' committee is designed by law to perform the following two roles:

(1) Monitor the implementation of the plan by the plan administrator. In this respect, the creditors committee can supervise the performance of the plan administrator, give any guidance or suggestions concerning compliance with the terms of the plan, and review the report on the progress of implementation provided by the plan administrator. The creditors' committee does not run the business or otherwise control the assets of the debtor; and

(2) Request the court to remove the plan administrator based on certain grounds stipulated in section 90/67 of the Bankruptcy Act, which can be classified into three groups, namely: (i) the lack of qualifications of the plan administrator; (ii) the failure of the plan administrator to perform their duty; or (iii) dishonest performance of duties and causing damage to creditors or the debtor.

The Rehabilitation Plan can provide the details of additional functions

Based on the above, a role on a creditors' committee may be helpful for the creditors to closely monitor the implementation of the plan and engage directly with the Plan Administrator and other key creditors.

A creditors' committee should be comprised of at least three, but no more than seven members. The Bankruptcy Act provides no criteria for the membership of the committee. In other words, members of the committee are not subject to neither the type of creditors, nor the nature or amount of the claim. The number of members depends upon the number of nominated persons.

The Bankruptcy Act contains no provisions concerning the restraint of advisors. As a result, unless the rehabilitation plan specifies otherwise, creditor committees may retain advisors at their own expense.

12. How are existing contracts 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 facing bankruptcy 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 like the rehabilitation proceedings detailed above.

13. 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?

The Official Receiver will generally realize assets of the distressed debtor through a public auction. Other sales techniques can be used, such as pre-negotiated sales transactions, which seem to be predominantly the most convenient and beneficial for the creditors, if the creditors’ committee approves of such alternative sales technique. 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 choices 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 allowed with the permission of creditors.

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 before the plan is approved.

14. 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?

A director’s responsibility is to run the company with the care and diligence of a careful businessman. If a director breaches this duty and causes a financial loss, the company or its shareholders can sue the director for compensation. If the director fails to act in good faith and protect the company’s interests, he or she may 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. The liability of the shareholders is generally separate from the liability of the company under Thai law. Shareholders’ liabilities are strictly limited to the full payment of subscribed shares in the dissenting company. Under the Civil and Commercial Code, specifically for certain executives of certain types of business enterprises, 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.

15. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

Neither bankruptcy nor rehabilitation proceedings will release the directors from the liabilities incurred because of their previous actions and decisions.

16. 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 it to be enacted or adopted anytime soon.

17. 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]

18. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions?

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, under the Bankruptcy Act, a debtor cannot initiate bankruptcy proceedings on its own. A liquidator or a creditor must initiate the proceedings.

Only certain types of local debtors are eligible for

rehabilitation proceedings, as defined by law.

19. How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?

There are no specific bankruptcy or rehabilitation regimes in respect to a group of companies. The current proceedings of certain debtor entities in a corporate group will not affect the other corporate group entities. Each debtor in the group will have to file for bankruptcy or rehabilitation on its own.

20. 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.

21. Did your country make any changes to its restructuring or insolvency laws in response to the Covid-19 pandemic? If so, what changes were made, what was/is their effect and were/are they temporary or permanent?

The pandemic has not resulted in any substantive changes to local restructuring or insolvency laws. However, we have seen several adoptions of electronic filing/ virtual hearings/ meeting systems in recent regulations to facilitate proceedings and ensure adherence with statutory the timeline. In addition, several court announcements and guidelines were issued to limit relevant activities and conduct as a means of preventing the virus's spread, causing temporary delays in proceedings.

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

Proposal for amendment of 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 has already been reviewed and approved by the Office of the Council of State, and it will now be sent to the Cabinet for approval before being referred to Parliament for consideration and approval.

Criteria for approval of commencement of rehabilitation proceedings by the Office of Insurance Commission

The Office of Insurance Commission (“**OIC**”) is the Thai insurance industry’s regulator, with the authority to oversee and supervise insurance company operations. The OIC published an announcement in April 2022, outlining the requirements for granting insurance companies authorization to commence rehabilitation proceedings. This corresponds to the requirement under the Bankruptcy Act that a debtor who operates an insurance business must obtain written approval from the OIC as a governmental regulator for insurance companies before proceeding with rehabilitation. This OIC criteria was recently developed in anticipation of a surge of restructuring in the insurance industry sustained during the COVID-19 epidemic in Thailand.

23. Is it a debtor or creditor friendly jurisdiction?

Thailand’s insolvency regime (for both bankruptcy and rehabilitation proceedings) is widely regarded as pro-creditor, considering all statutory requirements that each party must meet. There may be bias against foreign creditors in bankruptcy proceedings, where foreign creditors’ rights to participate in repayment and treatment by the Court are generally based on the principle of reciprocity/comity between relevant foreign countries and Thailand, but the Court will not apply this principle for repayment under rehabilitation proceedings.

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, debtors operating certain types 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?

Costs and time are often the most important barriers in Thai bankruptcy and rehabilitation proceedings. In general, the proceedings are open-ended by their very nature, for 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; 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.

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