

Legal Express

Business Reorganisation

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In Thailand, a business reorganisation is available under Chapter 3/1 of the Bankruptcy Act B.E. 2483 (1940) (as amended) (the “BA”) which is somewhat heavily influenced by the United States Bankruptcy Code and therefore, introduced several concepts very much like those prescribed in Chapter 11 of the Code, including the concept of automatic stay, creditors committee and etc. Following the introduction of a reorganisation to the BA in 1990s to deal with economic downturn from the Tum Yum Kung financial crisis, the BA’s business reorganisation scheme has been brought back to the public’s attention in 2020 when the world has faced an unprecedented challenge from the COVID-19 outbreak.

Under the business reorganisation scheme, the debtor will be able to continue its business operation and preserve its enterprise value which might otherwise be lost should its assets were separately distributed to each creditor who pursues individual claim against the debtor, while the creditors’ interests will concurrently be protected, allowing them to receive the repayment of outstanding debts fairly and equally and not less than the amount they would otherwise have received in a liquidation process.

Reorganisation Petition

The reorganisation process begins with the filing of a reorganisation petition with the bankruptcy court. The petitioner may be one or more creditors, the Bank of Thailand, the Securities and Exchange Commission, the Insurance Department, the official authority which supervises the debtor as prescribed in relevant Ministerial Regulations, or the debtor itself. The debtor who is qualified for reorganisation must be a private or public company or other juristic person as specified in relevant Ministerial Regulations, insolvent and owe one or several creditors a sum of not less than Baht 10 million, and there shall be a reasonable ground and a possibility for reorganisation of the debtor’s business.

Automatic Stay

Once the reorganisation petition is accepted by the court for consideration, an automatic stay shall occur which effectively restricts the ability of all concerned persons including the creditors in taking certain actions or proceeding against the debtor and its assets, e.g. the filing of lawsuit for dissolution, civil cases or bankruptcy proceedings, enforcement of existing judgements, foreclosure, debt collection and etc. This automatic stay provides the debtor a relief from the financial pressures from their creditors during the reorganisation process and

permits it to attempt debt repayment pursuant to a reorganisation plan (the “Plan”). Meanwhile, the debtor would still be allowed to maintain its business operation to the extent that the activities conducted are in the normal course of its business and required for the continuation of the debtor operation. The automatic stay will cease upon (i) the date on which the court orders a cancellation of the petition or a dismissal of the case; (ii) the date when the Plan is successfully implemented; (iii) the expiration of the implementation period specified in the Plan; or (iv) a cancellation of the reorganisation order or the Plan (as the case may be).

Reorganisation Plan and Planner

Following the court’s approval of the petition for the reorganisation, the debtor’s rights to manage its business and assets will generally be vested in a planner appointed by the court upon nomination by the petitioner or the creditors’ meeting, as the case may be. The planner must submit the Plan to the official receiver, with copies to all creditors entitled to vote and the debtor, within three months from the date the appointment of the planner is published. The deadline for submission of the Plan may be extended twice for a maximum of one month each time.

The Plan will classify all debts against the debtor and set forth, by class, the treatment of all those debts. To enable creditors to make an informed judgment about the plan, the BA requires that certain information need be included in the Plan including, inter alia, rationales for the reorganisation, details of assets, liabilities and obligations of the debtor at the time the reorganisation order is granted by the court, guidelines and procedures for the reorganisation, creditors classification, timeline which must not exceed five years.

Following the submission of the Plan by the planner, the receiver shall call a creditors’ meeting to consider the Plan and pass a resolution to accept, reject or amend the Plan proposed by the planner. The Plan is deemed to be approved by the creditors’ meetings only if such approval is passed by a resolution of either:

- (a) a majority vote of all classes of creditors (other than those deemed by law to have approved the Plan) which amount for not less than two-thirds of the total debts of creditors presenting at the meeting (in person or by proxy) and casting their vote; or
- (b) a majority vote of at least one class of creditors (other than those deemed by law to have approved the Plan) which amount for not less than two-thirds of the total debts of creditors within the same class presenting at the meeting (in person or by proxy) and casting their vote and when counting the total amount of debts owed to all creditors who approved the Plan, amounting to not less than 50 per cent of the total debts of the creditors being present at the meeting (in person or by proxy) and casting their votes. If the Plan is approved, the meeting may also appoint a creditors’ committee to act for all of the creditors in supervising and monitoring the implementation of the Plan. The creditors’ committee shall consist of at least three but not more than seven members who shall be elected from creditors or creditors’ representatives.

Application for Debt Repayment

Upon the publication of the planner’s appointment, unsecured creditors whose debts predate the reorganisation order must submit an application for repayment of debt to the official receiver within one month, failing of which the creditors will no longer be eligible to receive such repayment unless the Plan specifies otherwise. The secured creditor, however, may either apply for such debt repayment or exercise its right over the security granted to it instead, if all

criteria are met, e.g. court approval received or one year has lapsed since the date the reorganisation petition is accepted by the court.

Reorganisation Plan and Plan Administrator

Following the approval of the Plan by the creditors' meeting, the Plan will be further considered by the court, taking into account the explanations and objections made by the official receiver, the planner, the debtor and the creditors (if any). If the court considers that the Plan meets all the criteria as set out by the law, i.e. (i) the Plan contains complete information required; (ii) a proposal to settle the debts within the same group of the creditors does not create any unfairness among such creditor ; (iii) the priority for debt repayment is in accordance with those set forth by the law; and (iv) the amount to be received by the creditors upon successful completion of the Plan, is not less than the amount to be received in case the debtor is adjudged bankrupt, the court shall approve the plan. Upon the court's approval of the Plan, the Plan administrator will be notified and will, from such point onwards, be responsible for rehabilitating the debtor's business in accordance with the approved plan as well as be vested with the rights and duties to manage the debtor's business and asset from the planner.

If the reorganisation is successful according to the plan, the court will order a termination of the reorganisation which will release the debtor from all debts which could be claimed under the Plan but has not been applied for repayment. On the contrary, if the court deems that the reorganisation is not successful as planned and if the court finds it appropriate for the debtor to be declared bankrupt, it will issue an absolute receivership order against the debtor or order a cancellation of the reorganisation.

Reorganisation for SMEs

In 2016, the BA has been amended to allow small and medium enterprises (the "SME") to be able to enter into business reorganisation which it would otherwise not be able to should the standard requirements apply. Under the SME reorganisation, certain different requirements and criteria apply, which results in a shorter reorganisation process. In addition, the eligible SME debtors are not limited to only a private or public company limited or other juristic person as specified in relevant Ministerial Regulations but also an individual or a registered or non-registered partnership who operates an SME business pursuant to the SME promotion regulations that has been registered with the Office of the SMEs Promotions or other government agency.

In addition, the SME debtor who is qualified for reorganisation shall have minimum indebtedness owed to at least one creditor in the amount of (i) at least Baht two million, in case of individuals; (ii) at least Baht three million, in case of limited partnerships, registered partnerships, non-registered partnerships, group of persons or other prescribed juristic persons under the Ministerial Regulation; and (iii) at least Baht three million but less than Baht 10 million in case of private limited companies. Unlike the standard business reorganisation, the petition filed by the qualified SME debtor to the bankruptcy court shall include a Plan together with the evidence indicating that creditors owning not less than two-thirds of all debts have already approved such plan.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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