

Resolving Insolvency Questionnaire – Thailand

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Dear Ratanavadee Somboon,

We would like to thank you for your participation in the *Doing Business* project. Your expertise in the area of Insolvency in Thailand is essential to the success of the *Doing Business* report, one of the four flagship publications of the World Bank Group that benchmarks business regulations in 189 economies worldwide. The Resolving Insolvency indicators, which measure the time, cost and outcome of insolvency proceedings involving domestic entities and the quality of the insolvency laws, are one of the 11 indicator sets published by the *Doing Business* report.

The report attracts much attention around the world. The latest edition, *Doing Business 2015: Going Beyond Efficiency*, received over 4,000 media citations within two weeks of its publication on October 29, 2014. The coverage spanned major global, regional and local media outlets, from print and broadcast to the web. The *Doing Business* website had more over 800,000 page views and more than 54,000 downloads in the first two weeks after the report's launch.

Governments worldwide read the report with interest every year, and your contribution makes it possible for the *Doing Business* project to disseminate the regulatory best practices that continue to inspire their regulatory reform efforts. Since 2009, 68 economies have implemented 105 insolvency reforms, including 11 reforms in 2013/14.

Last year, the Resolving Insolvency indicator introduced the Strength of Insolvency Framework index aimed at measuring the laws and regulations applicable to liquidation and reorganization proceedings in each economy. We appreciate your contribution to this new index and look forward to receiving your responses and comments.

We are honored to be able to count on your expertise for *Doing Business 2016*. Please do the following in completing the questionnaire:

- Be sure to update your name and address, if necessary, so that we can mail you a complimentary copy of the report.
- Describe in detail any reform that has affected the insolvency process since June 1, 2014.
- Review the assumptions of the case study before updating last year's information in the questionnaire.
- Kindly return the questionnaire to dbinsolvency@worldbank.org.

We thank you again for your invaluable contribution to the work of the World Bank Group.



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Referrals: Please help us expand our list of contributors by referring us to other experts in the private or public sector (lawyers, notaries, public officials or any expert on this field) who can respond to the questionnaire.

First name	Last name	Position	Firm	Address	Phone	E-mail
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[]	[]	[]	[]	[]	[]	[]

1. DEFINITIONS OF TERMS USED IN THIS QUESTIONNAIRE

The Resolving Insolvency indicators measure the time, cost and outcome of either insolvency or debt enforcement proceedings involving domestic entities, as well as the strength of the insolvency framework. The purpose of the indicators is to assess the efficiency of the insolvency system by measuring the share of debt recouped by the creditors (the recovery rate) in insolvency and to assess the quality of insolvency laws by testing whether such laws include internationally accepted good practices. In completing the questionnaire, please keep in mind the following definitions:

"Foreclosure" is a process through which a secured creditor requires sale of the assets used as collateral in satisfaction of secured lending when the debtor fails to make payment. For the purpose of this study, *Foreclosure* refers to the sale of the assets to collect the value of the loan extended to the debtor through formal court proceedings (judicial foreclosures). *Foreclosure* also includes enforcement of security interests other than real estate mortgages.

"Insolvency" means that a debtor is generally unable to pay its debts as they mature and/or that its liabilities exceed the value of its assets.

"Insolvency representative" is a person or body (including one appointed on an interim basis) authorized in insolvency proceedings to administer the reorganization or the liquidation of the insolvency estate.

"Liquidation" is a process of assembling and selling the assets of an insolvent debtor in order to dissolve it and distribute the proceeds to its creditors. *Liquidation* may include the piecemeal sale of the debtor's assets or the sale of all or most of the debtor's assets as a going concern. For the purpose of this study, the term *Liquidation* refers only to formal in-court proceedings and does not include voluntary winding up of a company.

"Receivership" is the process of appointment by a court, a contract or a government official of a receiver to take custody of the property, business, rents and profits of a debtor that has breached the terms of its borrowing from a creditor with an enterprise charge. A receiver may be authorized to continue the debtor's business before selling the business as a going concern or before selling the assets separately to satisfy the debt.

"Reorganization" is a process through which the financial well-being and viability of a debtor's business may be restored so that the business can continue to operate, through means that may include debt forgiveness, debt rescheduling, debt equity conversions and sale of the business (or parts of it) as a going concern. For the purpose of this study, *Reorganization* refers only to formal in-court proceedings available to all commercial debtors and does not include schemes of arrangement, out-of-court agreements with creditors or reorganization before administrative bodies.

"Reorganization plan" is a plan by which the financial well-being and viability of the debtor's business can be restored.

2. REFORMS AND STATISTICS

2.1. Have there been any reforms in the area of corporate insolvency between June 1, 2014, and now, including any developments in the laws or practices relating to foreclosure, liquidation or reorganization? Please describe.

Response	Description
Yes	<ul style="list-style-type: none"> - Electronic Service of Document (e-Service), established under the Legal Execution Department (LED)'s Order no.779/2557 (2014) - LED's Order on the Improvement of Consideration of Official Receiver's Order in the Insurance Claims concerning Claims with Special Priorities under Section 26 of the Non-Life Insurance Act, B.E.2535 (1992) - LED's Circular Letter no.14 on the Clarification of Operation regarding Receivership or Bankrupt Status Check - LED's Circular Letter no. 17 on the Reestablishment of Understandings regarding Attachment of Cooperative Bond - LED's Circular Letter no.19 on the Guidelines on the Collection of Dificient Amonts and Fines of Public Auction - LED's Circular Letter no. 23 on the Collection of Stamp Duty from the Winning Bidder Attending the Public Auction - LED's Circular Letter no.24 on the Collection of Stamp Duty Attached to the Receipt under No.28 (b) of the Stamp Duty Schedule in the Revenue Code - Ministerial Regulation on Specifying other Juristic Persons as Debtors in the Reorganization Proceeding and Specifying Government Agency which has Powers and Duties to Supervise the Business Undertakings of the Debtor B.E. 2557 (2014)

2.2. Are any reforms in the area of corporate insolvency expected to come into effect prior to June 1, 2015, or in the longer term? Please describe.

Response	Description
Yes	<ol style="list-style-type: none"> 1. Electronic Bankruptcy Case Management System (e-Case Management System): including, <ol style="list-style-type: none"> 1.1 e-Case Management System allows the interested parties to track the progress of the case via the internet. 1.2 e-Payment allows the interested parties to pay fees or receive money via an electronic mean. 1.3 e-Filing allows the parties to the case to file a motion, a request or a statement via an electronic mean. (expected to be effective before the end of the year) 2. The Amendment of the Bankruptcy Act, focusing on 4 main issues, namely, <ol style="list-style-type: none"> 2.1 decreasing steps in consideration of claim; 2.2 the process of filing a composition (debt arrangement); 2.3 improving the rights of joint debtor and surety in receiving recovery in a fair manner; and 2.4 updating the criminal penalties especially fines. (expected to be effective before June 2015) 3. The Amendment of the Bankruptcy Act regarding Business Reorganization that allows SMEs to enter into the business reorganization procedures through prepackage measures (expected to be effective on early next year) 4. Ministerial Regulation on the Plan Preparer in the Business Reorganization Proceedings under the Bankruptcy Act (expected to be effective before the end of the year) 5. Handbook on the Application for License of the Plan Preparer, under the Act on Facilitating the Consideration of Licenses Issued by State Agencies, B.E.2558

(expected to be effective before June 2015)

2.3. How many insolvency cases involving commercial entities did you or your firm handle in 2014?
Please count all foreclosure, liquidation and reorganization proceedings completed between January 1 and December 31, 2014, or pending as of December 31, 2014.

Response	Precise number or approximate estimate
(e) More than 100 (please provide details)	460 Cases [Liquidation 448 cases, Reorganization 12 cases]

2.4. How many insolvency cases against commercial entities were filed in your economy in 2014?
Please count all foreclosure, liquidation and reorganization proceedings together. Please note that we do not consider cases that involve unincorporated sole proprietorships.

Response	Precise number or approximate estimate
-Click to Select-	not in the capacity of LED to answer.

2.5. In your opinion, what proportion of distressed businesses filing for insolvency continued to operate as a going concern upon completion of insolvency proceedings in 2014, including sale as a going concern through liquidation as well as through reorganization? *Please provide details in the comments section, if any, or references to available statistics.*

Response	Comment
50-75%	Reorganization Proceedings : 63.63% (Total of completed cases : 22, successfully reorganized and continued-operated cases : 14) *Liquidation Proceedings : 301 Cases After the completion of bankruptcy proceedings, the LED does not collect data of the cases and cannot indicate whether that the companies still operate their business.

3. CASE STUDY ASSUMPTIONS

Please answer the questions in section 4 of this questionnaire on the basis of the case study assumptions below.

(a) Mirage is a local company that runs a hotel in Bangkok; its only asset and source of income is the hotel property. The value of the hotel is THB 16,665,201. On January 1, 2009, Mirage signed a 10-year loan agreement with BizBank, a local bank. The loan was secured by the hotel property and/or by a universal business charge (an enterprise charge) in those economies where this type of collateral is allowed. BizBank's outstanding credit is THB 16,665,201, which represents 74% of Mirage's total outstanding debt. The outstanding amount owed to BizBank is exactly equal to the market value of the hotel business.

(b) Unsecured creditors (e.g. suppliers, tax authorities and employees) hold the remaining 26% of Mirage's debt, which is equivalent to THB 5,855,341. Among unsecured creditors, the largest group is Mirage's suppliers (50 in total), all of which are owed payment for their last deliveries.

(c) Mirage's founder owns 51% of the company and is the chairman of its board of directors (or equivalent supervisory body). No other shareholder holds more than 5% of the voting power. The company has a professional general manager and 201 employees. All parties in this scenario are local entities or citizens. The founder and Mirage's management both want to keep the firm operating.

(d) Today is January 1, 2015. Since the execution of the loan agreement with BizBank, Mirage has met all conditions of its loan and made all payments on time. However, at the end of 2014, Mirage experienced an unexpected operating loss due to worsened market conditions. As a result, Mirage will default on its next loan payment to BizBank, which is due tomorrow, January 2, 2015. Mirage can neither obtain a new loan from another financial institution nor renegotiate its current loan with BizBank.

(e) The company expects to have negative net worth and operating losses in both 2015 and 2016. The company's expected 2015 cash flow will cover all operating expenses, including supplier payments, salaries, maintenance costs and taxes. It will not cover principal or interest payments to BizBank.

(f) If Mirage is sold as a going concern (i.e. as a business that has the resources needed in order to continue to operate in the foreseeable future), it would fetch 100% of its current market value. But if Mirage's assets are sold piecemeal, they would fetch only 70% of Mirage's current market value.

4. CHOICE OF PROCEDURE, APPLICABLE LAWS AND GENERAL ESTIMATES

Please update the data in the following sections on the basis of the case study assumptions in section 3. For your convenience, we have included, where available, a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all *Doing Business* contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year.

4.1. Which procedure is most likely to apply in Mirage's case? Please explain why, in your opinion, this would be the most likely procedure.

Last year		This year	
Procedure	Comment	Procedure	Comment
Reorganization	Mirage management will initiate reorganization as it serves to preserve the value of the hotel and keep the business; in addition, there is an opportunity under the reorganization process to compromise debts with creditors. As specified in Section 90/12 (6) of the Bankruptcy Act B.E. 2483, no secured creditors shall enforce payment of debt against the asset which is security.	Reorganization	In the present case, if Mirage would like to continue operating its hotel, reorganization proceedings is most likely to be applied. After the commencement of the case, secured creditor neither can foreclose his collateral, nor file a lawsuit for repayment. In this period, Mirage has a great opportunity to create and propose the reorganization plan. In the plan, mirage may adjust its financial structure, converse or boost up its equity, or recreate its debt repayment schedule, ect. According to the assumption, there is only one secured creditor, as well as it is a small-scale case. The reorganization plan is highly to be successful. Moreover, under Section 90/13 and 90/14, the secured creditor is protected. Consequencely, Mirage will be able to repay its loan and continue operating the hotel.

4.2. Which court will be involved in Mirage's case? (For example, Mirage's management applies to the city court for reorganization; BizBank commences judicial foreclosure proceedings).

Last Year	This Year
YES, Central Bankruptcy Court	Central Bankruptcy Court

4.3. Will the hotel be able to continue operating upon completion of the entire insolvency process? Please explain why, in your opinion, this would be the most likely outcome. Please note that the hotel may survive as a going concern either through continuation of its operations or through a sale as an operating whole. **Going concern means that a business has the resources needed in order to continue to operate in the foreseeable future.**

Last year	This year
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Response	Comment	Response	Comment
Yes, the hotel will continue operating as a going concern	The reorganization plan will be approved and the hotel keeps operating as a going concern.	Yes, the hotel will continue	After the reorganization plan has been approved by the court and successfully implemented, the hotel's liquidity will be increased, and subsequently be able to continue its business.

4.4. What laws, regulations and rules will apply in Mirage's case?

Last Year	This Year
Bankruptcy Act B.E. 2483 (ประเทศไทย พ.ศ. 2483) of 1940, as amended by amendments Nos. 1 - 7.	<ul style="list-style-type: none"> - Bankruptcy Act 1940 (B.E. 2483) - LED's Order No. 393/2549 concerning reorganization administration practice. - Act on Establishment of Bankruptcy Court and Procedure for Bankruptcy Cases. (B.E. 2542) - Ministerial Regulation on Reorganization Practice B.E. 2541

4.5. How long will the entire insolvency process for Mirage take? Please provide the most likely estimate based on your experience. Please, indicate the main procedural steps required to complete the entire process and how much time each procedural step will take in practice. The time begins at the moment of Mirage's default and ends when BizBank is repaid all or some of the money owed to it. If the procedure is reorganization, the timeframe ends when the reorganization plan is approved. If the initial procedure is converted from one to another, please take into account the time of the second procedure as well.

Last year		This year	
Response	Comment	Response	Comment
32 months	The reorganization procedure will approximately take 2.7 years in total. After Mirage's petition to initiate reorganization, it takes around 4 months for the court to review the case, proceed with inquiries to relevant parties to examine the grounds for business reorganization, order the beginning of the reorganization proceeding and appoint an official receiver overseeing the entire process. Pursuant to Section 90/17, the Court would appoint the person who is nominated by Mirage as the plan preparer if suitable, which could take approximate 3 months. Creditors may file an application for repayment of debts for business reorganization within one month after the order of appointment of the plan preparer is published under Section 90/26. As specified in Section 90/43, within 3 months after the appointment, the plan preparer is required to submit the reorganization plan to the official receiver and creditors. In practice it will take around 1 to 2 years to prepare the creditor list, draft and vote the plan taking consideration of	14 months	After filing a petition for business reorganization, court may grant an approval of reorganization within 4 months. Next, it will be published in the Royal Gazette within 1 month. Creditors have to file a claim for repayment within 1 month from the published date. Debtor shall propose a reorganization plan within 3 months from such date. The receiver will hold a creditor's meeting within 2 months from the date of submission of the plan. If the creditors reach the special resolution voting for approval of the plan, the receiver shall report such plan to the court. The court may appoint the date for considering the plan on the urgent basis. The receiver must be given sufficient time to notify the plan preparer, debtor, and creditors at least 3 days in advance. After such date, it may take approximately 2 months, then the court will grant an order of plan approving.

	all possible objections and corresponding amendments to the plan. After the reorganization plan is approved by creditors and verified by the court, the implementation of the plan may take additional 6 months or more until BizBank is repaid some or all of the money owed to it.		
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4.6. How much will the entire insolvency process cost? Please provide the most likely estimate based on your experience. The estimate below should be expressed as percentage of the value of Mirage's estate, which is THB 16,665,201. Please indicate the applicability of and the estimates for the following cost components: court fees, fees of lawyers, insolvency representatives, auctioneers and other professionals involved in the proceedings, and all other applicable fees and costs. If the initial procedure is converted from one to another, please take into account the cost of the second procedure as well.

Last year			This year	
	Response	Comment	Response	Comment
Total Cost	36%	The costs associated with the case would amount to approximately 36% of the value of the debtor's estate. Cost incurred during the entire insolvency process mainly include court or government agency fees (<1%), attorney fees (10%), costs of notification and publication (<1%), insolvency representative or receiver fees (5%-10%), and fees of accountants, assessors, inspectors and other professionals (5%-10%). However; the fees of auctioneers are specified in the Civil Procedure Code and based on the value of the asset and the manner of liquidation and the fees of service providers depend on the rates set by each firm.	0.48%	Cost Breakdown is as belowed.
Cost Breakdown				
Court fees			0.3 %	Court fees : 1,000 THB Advanced fees for case administration : 50,000 THB
Attorney's fees			- %	Not in the capacity of LED to answer.
Fees of insolvency representative or receiver			-%	-
Auctioneer's fees			-%	-
Fees of accountants and other professionals			-%	-
Other (please specify)			0.18%	Advanced fees for case administration : 30,000 THB (After the court grant an approval of reorganization, the petitioner shall pay the deposit for expenses for administering the case at the Legal Execution Department. This advanced deposit will be spent for all expenses accrued during the proceedings including receivers' compensation (e.g. when they have to go to court), expenses for services

		(e.g. services for public auction).
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5. LEGAL FRAMEWORK

This section focuses on the legal framework applicable to judicial REORGANIZATION and LIQUIDATION of commercial entities in your economy. Please answer the following questions on the basis of the legal framework applicable to commercial entities only (personal insolvency excluded), and please specify the applicable article of the law for each answer. For your convenience, we have included, where available, a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all *Doing Business* contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year.

5.1. COMMENCEMENT OF PROCEEDINGS

5.1.1. What procedures are available to a DEBTOR when commencing insolvency proceedings?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(c) Debtor may file for reorganization only	Under Section 9 of the Bankruptcy Act, only a creditor can file a bankruptcy case. However, both a creditor and a debtor can file for business reorganization pursuant to Section 90/2.	(a) Debtor may file for both	<p>In liquidation proceedings, only creditor shall commence bankruptcy cases. [Section 9, Bankruptcy Act (1940)] However, in the case that the debtor is a registered ordinary partnership, a limited partnership, a limited company, or any other juristic person, the liquidator may also submit a petition in order to commence the bankruptcy proceedings if it appears that the debtor is insolvent. [Section 88, Bankruptcy Act]</p> <p>In reorganization proceedings, a debtor may file a petition for business reorganization. [Section 90/2, 90/3, 90/4(2), Bankruptcy Act (1940)]</p>

5.1.2. Does the insolvency framework allow a CREDITOR to file for insolvency of the debtor?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Yes, a creditor may file for both liquidation and reorganization	A creditor may file for the insolvency of the debtor under Section 9 of the Bankruptcy Act, B.E.2483 [BA]. A creditor may file a petition for both liquidation and reorganization of the debtor according to Section 90/2.	(a) Yes, a creditor may file	<p>Liquidation : Only creditor may set up a bankruptcy charge. [Section 9, Bankruptcy Act (1940)]</p> <p>Reorganization : The creditor, who may consist of one person or more with a definite amount of debt of not less than 10 million THB, or debtor or government agency may file a petition for reorganization of debtor's business under the provision of reorganization chapter. [Section 90/2, 90/4, Bankruptcy Act (1940)] In addition, recently, the cooperative is specified as other juristic person that can be</p>

			a debtor under the reorganization proceeding.
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5.1.3. What basis for commencement of insolvency proceedings is allowed under the insolvency framework? *If different tests are available in your economy for different proceedings, please explain the distinctions in the comment section.*

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(d) Both (a) and (b) options need to be complied with, concurrently	Under Section 9 of the Bankruptcy Act the creditor may set up a bankruptcy charge against the debtor only when: (1) The debtor is insolvent (whereby liabilities exceed assets); and (2) The debtor who is a juristic person, is indebted to one or several plaintiff creditors amounting to not less than Baht 2 million; and; (3) Said debts may be determined in a definite amount, irrespective of whether they become due for payment immediately or at a future date". Furthermore, a debtor will be presumed insolvent (whereby liabilities exceed assets) where it receives no less than two demand letters from its creditors and yet fails to pay the overdue amount pursuant to Section 8. For reorganization Section 90/3 states that the debtor is insolvent and indebted to one creditor or more all together for a definite amount of not less than Baht ten million, weather such debt is due promptly or thereafter, if there is a reasonable ground and prospect to reorganize the business of the debtor, the person may file a petition for business reorganization with the court.	(b) The value of debtor's li	<p>Liquidation : The creditor may set up a bankruptcy charge against the debtor only when 1) the debtor is insolvent; and 2) the debtor who is a natural person who is indebted to one or several plaintiff creditors amounting to not less than Bath one million, or the debtor who is a jurictic person who is indebted to one or several plaintiff creditors amounting to not less than Bath two million; and 3) the said debts may be determined in a definite amount, irrespective of whether it becomes due for payment immediately or at a future date. [Section 9, Bankruptcy Act (1940)]</p> <p>Reorganization : The person under Section 90/4 may file a petition for business reorganization with the court when the debtor is insolvent and indebted to one creditor or more alttogether for a definite amount of not less than 10 million THB. [Section 90/3, Bankruptcy Act (1940)]</p>

5.2. MANAGEMENT OF DEBTOR'S ASSETS

5.2.1. Does the insolvency framework allow the continuation of contracts supplying essential goods and services to the debtor (goods and services necessary for the survival of the business), even where the debtor is in breach?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Yes, continuation is always allowed	In reorganization, from the date when the court accepted the petition for opening reorganization proceedings, business operators of public utilities such as	Yes	Liquidation : If the condition of the business of the debtor indicates reasonable grounds for continuing the operation, upon the approval of a creditor's meeting, the

	<p>electricity, water supply, and telephone, shall not suspend their services supplied to the debtor unless otherwise approved by the court (Section 90/12 (11) of the Bankruptcy Act). There are not provisions allowing the continuation of contracts supplying goods and services to the debtor applicable in Bankruptcy cases.</p>	<p>receiver himself may operate such business in order to winding it up, he may appoint any person or the debtor to be the manager with powers and duties as may be prescribed. Hence, the receiver has an authority to continue the supplying or servicing contract. [Section 120, Bankruptcy Act (1940)]</p> <p>Reorganization : The debtor shall not dispose of, distribute, transfer, let, pay debt, create debt or do any act which creates encumbrances over his asset except where such act is essential so that the debtor may carry on his business as normal, unless otherwise ordered by the court whom the petition is filed. Therefore, if the contract is necessary for debtor's going concern business, the debtor may assume such contract. [Section 90/12(9), Bankruptcy Act (1940)]</p>
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5.2.2. Does the insolvency framework allow the rejection by the debtor (or by insolvency representative or by court on debtor's behalf) of overly burdensome contracts (the cost of performance is greater than the benefit to be received), where both parties have not fully performed their obligations?

Last year		Last year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	<p>In case of bankruptcy, under Section 122 within three months from the date on which the receiver learns that assets of the debtor or rights under a contract are subject to terms more onerous than the benefits receivable thereunder, the receiver is empowered to refuse such assets or rights under such contract. In case of reorganization, according to Section 90/41, within two months from the date on which the plan administrator is informed of the courts approval of the plan, the plan administrator shall have the power to refuse to accept assets of the debtor or rights under a contract wherein the obligations exceed the benefits to be derived therefrom, as stipulated in the plan.</p>	Yes	<p>Liquidation : Within three months from the date on which the receiver learns that asset of the debtor or rights under a contract are subject to terms more onerous than the benefits receivable thereunder, the receiver is empowered to refuse such asset or right under such contract. [Section 122, Bankruptcy Act (1940)]</p> <p>Reorganization : Within the time period of two months from the date on which the plan administrator is informed of court's approval of the plan, the plan administrator shall have the power to refuse to accept assets of the debtor or rights under a contract wherein the obligations exceed the benefits to be derived therefrom, as stipulated in the plan. [Section 90/41 bis, Bankruptcy Act (1940)]</p>

5.2.3. Does the insolvency framework allow avoidance of the following transactions executed before the filing for insolvency?

	Last year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Preferential transactions, which resulted in a creditor obtaining more than its pro rata share of the debtor's assets and which occurred when the debtor was insolvent	Yes	<p>In reorganization, transactions undertaken within 3 months before filing the petition can be invalidated if they placed a creditor in a more advantageous position than other creditors (Section 90/41 of the Bankruptcy Law). The</p>	Yes	<p>Liquidation : Upon the filing of a motion by receiver, the court is empowered to cancel any transfer of asset or any act done or permitted to be done by the debtor during the three months prior to an application to</p>

		<p>same provision applies in liquidation under Section 115 of the Bankruptcy Act.</p>		<p>adjudicate him as bankrupt and thereafter, and with the intention to give undue preference to a creditor. [Section 115, Bankruptcy Act (1940)]</p> <p>Reorganization : When it appears that there has been a transfer of assets or any other act which the debtor had committed or had allowed to be committed within the period of three months before the filing of the petition and thereafter, with the intent to place any creditors, the plan preparer or plan administrator or receiver may file an application to the court in the form of motion. In this regard, the court has power to order the cancellation of the transfer or such act. [Section 90/41 Bankruptcy Act (1940)]</p>
<p>(b) Undervalued transactions, which were made as a gift or in exchange for less than equivalent value and which occurred when the debtor was insolvent or resulted in the debtor becoming insolvent</p>	<p>Yes</p>	<p>In liquidation, according to Section 114 Bankruptcy Act, in case of a gratuitous act or the case where the debtor received compensation of a less than a reasonable amount, it shall be presumed that the debtor and the person enriched thereby that such act would be to the prejudice of the creditors. The court has the right to cancel such transactions. Similar provision applies in reorganization under Section 90/40.</p>	<p>Yes</p>	<p>Liquidation : The receiver can file a motion to the court for an order to cancel fraudulent acts under the Civil and Commercial Code if such acts arose within the time period of one year before the application for adjudication of bankruptcy and thereafter, or if it is a gratuitous act or the case where the debtor received compensation of a less than reasonable amount, it shall be presumed that the debtor and the person enriched thereby knew that such act would be to the prejudice of the creditors. [Section 113, 114 Bankruptcy Act (1940)]</p> <p>Reorganization : The plan preparer, plan administrator, or receiver may ask the court to cancel a fraudulent act pursuant to the Civil and Commercial Code by filing a motion. If the juristic act which is subject to a motion for cancellation due to fraud arose within the period of one year before the date of filing of the petition and thereafter, or is a gratuitous act, or is an act where the</p>

				debtor has received compensation in an amount less than appropriate, it shall be presumed that it is an act which the debtor and the person who was enriched thereby had the knowledge that it would prejudice creditors. [Section 90/40 Bankruptcy Act (1940)]
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5.2.4. Does the insolvency framework provide for the possibility of the debtor obtaining credit after commencement of insolvency proceedings (post-commencement credit) to finance its on-going needs during the proceedings?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	The Bankruptcy Act does not has a specific provision on post-commencement finance.	Yes	<p>Liquidation : If the receiver considers it is nessary to borrow money for the benefit of management of the debtor's asset, the receiver, on acquiring the court's permission, may obtain loans. A debt that creditors allowed to be created in order to operate debtor's business shall be filed a claim for repayment. [Section 94(2), 144 Bankruptcy Act (1940)]</p> <p>Reorganization : The debtor shall not dispose of, distribute, transfer, let, pay debt, create debt or do any act which creates encumbrances over his asset except where such act is essential so that the debtor may carry on his business as normal, unless otherwise ordered by the court whom the petition is filed. Therefore, if the contract is necessary for debtor's going concern business, the debtor may assume such contract. [Section 90/12(9), Bankruptcy Act (1940)]</p>

5.2.5. Does the insolvency framework assign priority to post-commencement credit?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
N/A	The Bankruptcy Act does not has a specific provision on the issue.	(b) Yes, over ordinary u	<p>According to Section 130 of Bankruptcy Act, the expenses of the receiver in managing the debtor's assets ranked as the second order of distribution of debtor's asset. Hence, if the post-commencement credit is beneficial for managing of debtor's asset, the creditor shall obtain the repayment before other creditors.</p> <p>Reorganization : No specific provision for the order of repayment of the post-commencement credit. However,</p>

			such loan is not subject to the automatic stay proceeding. Therefore, creditor shall receive the repayment pursuant to the privity of contract and if the debtor does not pay the debt, creditor shall file a petition to the court as a civil case.
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5.3. REORGANIZATION PROCEEDINGS

5.3.1. Which creditors vote on the proposed reorganization plan?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) All creditors	Section 90/46 of the Bankruptcy Act states that that resolution approving the plan must be a special resolution by: (1) the creditors' meetings of each and every group of creditors; or (2) the creditors' meeting of at least one group of the creditors who is not group of creditors under Section 90/46 bis, and the total debt of the creditors who have approved the plan at the meeting of all groups of creditors is not less than fifty per cent (50%) of the debt of the creditors who attended the meeting in person or by proxy at the creditors' meeting in person or by proxy at the creditors' meeting and voted on such resolution.	(a) All creditors	The resolution approving the plan must be a special resolution by the creditors' meetings of each and every group of creditors. [Section 90/46, 90/46 bis, Bankruptcy Act (1940)]

5.3.2. Does the insolvency framework require that the following provisions must be followed in order for the reorganization plan to be approved?

	Last year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Creditors entitled to vote on the reorganization plan are divided into classes according to their respective rights	Yes	Sections 90/58(2) and 90/46 of the Bankruptcy Act prescribe that the secured creditors are to be put into separate groups and are to be distinguished from unsecured creditors. SECTION 90/42 bis. The classification of creditors to vote the reorganization plan under Section 90/42(3)(b) shall be done as follows: (1) Each secured creditor having a secured debt of not less than fifteen percent (15%) of the total indebtedness for which a claim for	Yes	Section 90/42 bis of Bankruptcy Act (1940) provides the classification of creditors and the resolution approving the plan must be a special resolution by the creditors' meetings of each and every group of creditors. [Section 90/46, 90/46 bis, Bankruptcy Act (1940)].

		<p>repayment may be filed in the business reorganization shall each be classed as a group, (2) secured creditors not classified under (1) shall be classed as a group, (3) unsecured creditors may be classified in several groups, where unsecured creditors whose claims or interests are identical or similar in material aspects are in the same group, (4) creditors under Section 130 bis shall comprise one group.</p>		
(b) Each class of creditors votes separately	Yes	<p>Section 90/46 of the Bankruptcy Act states that that resolution approving the plan must be a special resolution by the resolution approving the plan must be a special resolution by the creditors' meetings of each and every group of creditors.</p>	Yes	<p>The resolution approving the plan must be a special resolution by the creditors' meetings of each and every group of creditors, or the creditor's meeting [Section 90/46, 90/46 bis, Bankruptcy Act (1940)]</p>
(c) Creditors of the same class receive the same treatment under the reorganization plan	Yes	<p>Under section 90/42 ter SECTION 90/42 ter. The rights of the creditors within the same group must be performed equally among such creditors, except where a disadvantaged creditor in a group has given its written consent.</p>	Yes	<p>The rights of the creditors within the same group must be performed equally amongst such creditors, except where a disadvantaged creditor in a group has given its written consent. [Section 90/42 ter, Bankruptcy Act (1940)]</p>

5.3.3. Does the insolvency framework require that a reorganization plan must specify that the anticipated return to dissenting creditors will be at least equal to the return that they would obtain in a liquidation?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	<p>Under Section 90/58 (3) of the Bankruptcy Act, the court shall issue an order approving the plan after the courts consideration thereof and its determination that when the implementation of the plan has been successful, the results shall be that the creditors receive debt repayments in amounts that are not less than in case where the court has adjudged the debtor a bankrupt.</p>	Yes	<p>The court shall issue an order approving the plan after the court's consideration thereof and determination when the implementation of the plan has been successful, the result shall be that the creditors receive debt repayments in amounts that not less than the case where the court has adjudged the debtor a bankrupt. [Section 90/58(3), Bankruptcy Act (1940)]</p>

5.4. CREDITOR PARTICIPATION

5.4.1. Does the insolvency framework require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) nominate the insolvency representative or approve/ratify/reject the appointment of the insolvency representative?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	In reorganization, the creditors can nominate and elect the insolvency representative under Section 90/17 and 90/18 of the Bankruptcy Act. In liquidation the Minister is empowered to appoint the representative, but not the creditors under Section 139 of the Bankruptcy Act.	Yes	<p>Liquidation : Accordng to Thai Bankruptcy System, the Minister is entitled to appoint any one or more persons as receivers. [Section 139] If the condition of the business of the debtor indicates reasonable grounds for continuing the operation, upon the approval of a creditor's meeting, the receiver himself may operate such business in order to winding it up, he may appoint any person or the debtor to be the manager with powers and duties as may be prescribed. Hence, the receiver has an authority to continue the supplying or servicing contract. [Section 120, Bankruotcy Act (1940)]</p> <p>Reorganization : According to Section 90/17 of Bankruptcy Act, creditors may raise an objection of nomination of plan's preparer.</p>

5.4.2. Does the insolvency framework require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) approve the sale of substantial assets of the debtor, if such sale is made in the course of the insolvency proceedings?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	Sale of substantial assets needs to have the approval of the creditor committee by resolution, under Section 34 and Section 38 Bankruptcy Act [No.7] B.E.2547[2008]	Yes	<p>Reorganization : The managing and acquiring benefits from the assets of the debtor needs to be indicated in the plan. The sale of substantial assets of debtor is part of the managing asset that requires to be detailed in reorganization plan. The creditor's meeting will vote for such a plan; hence, the creditors has the rights to reject or approve. [Section 90/42(2), 90/42(3)(e), Bankruptcy Act (1940)]</p> <p>Liquidation : Sale other than by public auction must receive the approval of the creditors committee, except for special circumstances pursuant to the law. In case of public auction sale, creditors have the right to attend the auction and to object the sale price. [Section 123 Bankruptcy Act, Section 309, 309 bis of Civil Procudure Code]</p>

5.4.3. Does the insolvency framework provide that an individual creditor has the right to request information from the insolvency representative on the debtor's business and financial affairs?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
No	While the creditors can access the documents filed at the court or at the legal execution department, they are not guaranteed access to information of the debtor's company.	Yes	Reorganization : The reorganization plan must contain detail concerning assets, liabilities, other biding obligations as well as debtor's business. A copy of the plan shall be sent to each creditor. In addition, each creditor may file a request for information anytime. [Section 90/42, 90/46 of Bankruptcy

			<p>Act (1940)]</p> <p>Liquidation : Typically, in the meeting of creditors and the public examination of the debtor, creditors may access to information about debtor's business and asset. Moreover, practically, creditors may request for such information anytime by filing a request to the receiver or court. [Section 31, 32, 42, 43, 64 of Bankruptcy Act (1940)]</p> <p>Moreover, an individual creditor in both proceedings may file a petition to the receiver to oversee and make a copy of document. [Section 54 of Civil Procedure Code with Section 14 of Act on the Establishment of Bankruptcy Court and Bankruptcy Procedure].</p>
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5.4.4. Does the insolvency framework provide that an individual creditor has the right to object to the decision accepting or rejecting its own claims AND claims of other creditors?

Last year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
Yes	A creditor can object to an application for repayment of debts filed by other creditors under Section 90/29 in business reorganization proceedings. Similarly, a creditor can dispute any claim for repayment of debts filed by other creditors in the bankruptcy proceeding under Section 106.	Yes	<p>Reorganization : The receiver shall issue the orders for repayment of the debt. Any objections to the orders may be filed before the court within 14 days of learning of the orders by any interested person. [Section 90/32 of Bankruptcy Act (1940)]</p> <p>Liquidation : Creditor or person suffered any loss because of the receiver's decision may file a motion to the court within 14 days from the date on which he became aware of such decision.</p> <p>Moreover, in both proceedings, any interested person who suffered from mentioned decisions may appeal to the Supreme Court within 1 months from the date of pronouncing a judgment. [Section 24, Act on the Establishment of Bankruptcy Court and Bankruptcy Procedure].</p>

Thank you very much for completing the Resolving Insolvency questionnaire!

We sincerely appreciate your contribution to the Doing Business project.

The results will appear in *Doing Business 2016* and on our website: www.doingbusiness.org.

Your work will be gratefully acknowledged in both, if you wish.