

**Explanatory Memorandum**

**Bankruptcy Act (No. 8)**

**B.E. 2558 (2015)**

Whereas some bankruptcy proceedings are out-of-dated and uncertain, it is appropriate to amend some of provisions. The objectives and amendments are as follows:

- (a) To identify contents of the composition prior to bankruptcy as well as authorities of official receivers who are in charge of primarily looking into such composition in order to boost up speed and certainty. (Amendment of Section 45),
- (b) To grant creditor, who has not filed claim for repayment of the debt within the time period due to the inevitable event, the right to file such claim for repayment of the debt in order to create fairness. (Adding of Section 91/1),
- (c) To grant the official receiver authority to consider and issue the order of repayment, including to specify qualification of receiver who is entitle to issue such order under the Ministerial Rule announced in the Government Gazette in order to reduce a number of legal proceedings and enhance a swiftness of public service. (Amendment of Section 105, 106, 108, 139 and Repeal of Section 107, including the amendment of other related sections: Section 35, paragraph two of section 37, and paragraph two of Section 91),
- (d) To amend the order of payment of expenses and debts from distributing the assets amongst creditors. (Amendment of Section 130(4)), and
- (e) To amend the Penalty Provision in accordance with economic and social situation. (Amendment of Section 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 174).

**Bankruptcy Act (No. 8)**

**B.E. B.E. 2558 (2015)<sup>1</sup>**

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**BHUMIBOL ADULYADEJ, REX.**

Given on the 20th Day of August B.E. 2524.

Being the 70th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is proper to amend Bankruptcy Law.

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislative Assembly, as follows:

Section 1 This Act shall be called the “Bankruptcy Act (No. 8) B.E. 2558 (2015).”

Section 2 This Act shall come into force as from the day following the date of its application in the Government Gazette.<sup>2</sup>

Section 3 Section 35 of the Bankruptcy Act, B.E. 2483 shall be repealed and replaced by the following:

“Section 35 In counting votes at each meeting of creditors, the official receiver shall inquire the creditors attending the meeting whether or not any person objects to the voting of a creditor whose claim for repayment has not yet been allowed by the official receiver. If no one objects, the vote of such creditor shall be counted.

If any person objects to any claim for repayment of debts, the official receiver shall order whether or not and to what extent voting can be made. If the official receiver considers that he cannot yet give such order at that time, the obstacle shall be recorded, and the creditors may vote subject to the condition that, if later, the official receiver issues order refusing votes to any extent, the votes of such creditor shall be deemed invalid to that extent.

The order of the official receiver may be appealed to the court within fourteen days from the date of issuing order.”

Section 4 Paragraph two of Section 37 of the Bankruptcy Act, B.E. 2483 shall be repealed and replaced by the following:

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<sup>1</sup> Translated by the Legal Execution System Development and Property Valuation, the Legal Execution Department – pending review and approval.

<sup>2</sup> Published in the Government Gazette, Vol. 132, Part 80 A, Page 1, dated 26th August B.E. 2558 (2015).

“The creditors’ committee shall consist of no less than three and no more than seven persons selected from creditors and their representatives but such creditors or their representatives can act as a committee member when the official receiver has granted orders approving the claims for repayment of debts of such creditors.”

Section 5 Section 45 of the Bankruptcy Act, B.E. 2483 shall be repealed and replaced by the following:

“Whenever the debtor desires to settle in the satisfaction of his debts by partial repayment or in any other manner, he shall submit his proposal for the composition of his debts in writing to the official receiver within seven days from the date of submission of his explanation of matters relating to his business and assets under Section 30, or within such period as determined by the official receiver.

The proposal for composition of the debts shall compose of the statements of composition, method of business or asset management, details of collateral, or guarantor (s), if any, and shall contain at least the following matters;

- 1) Priority of repayment under this Act,
- 2) Settlement amount,
- 3) Guideline and process of performing a composition,
- 4) Date of repayment,
- 5) Management of collateral, if any, and
- 6) Guarantor(s), if any,

If the proposal for composition is incomplete due to lack of any details, the official receiver shall ask the debtor to amend and complete it.

The official receiver shall call a meeting of creditors to consider and adopt a special resolution whether the proposal shall be accepted or not.

Section 6 Paragraph 2 of Section 91 of the Bankruptcy Act B.E. 2483 shall be repealed and replaced as follows:

“The claim for repayment of the debt shall be made in accordance with a printed form, with a statement showing details of the debt, the evidence of such debt, and any asset of the debtor held as a collateral or which may be in the creditor’s possession. The creditor shall submit therewith related documents of such debt.

Section 7 The following provision shall be added as Section 91/1 of the Bankruptcy Act B.E. 2483:

“Section 91/1 If creditor fails to file the claim for repayment of the debt within the period stated in Section 91 paragraph one, the creditor may file the application by motion stating the wish to file the claim and showing the inevitable event causing such failure. If the court sees that the failure is caused by the inevitable event and there is a reasonable ground to grant the filing, the court shall grant the filing of the claim for repayment of the debt with the official receiver within the period determined by the court.

Any creditor who has filed the claim for repayment of the debt in accordance with paragraph one shall be paid from the property of the estate existing at the time after the distribution of assets amongst creditors and before such filing. The repayment to such creditor shall not affect any process having been made by the court, the official receiver, or the meeting of creditors.”

Section 8 Section 105 and 106 of the Bankruptcy Act B.E. 2483 shall be repealed and replaced as follows:

“Section 105 In considering and issuing order to the claim for repayment of the debt, regardless of whether or not the claim is judgment debt, the official receiver shall have the power to issue summons to creditors, debtors, or other persons to appear for interrogation, to testify, or to submit documents in order to examine such debt.”

Section 106 Where any claim for repayment of the debt is not disputed by other creditors, the debtor, or other official receiver, the authorized official receiver may order the approval of repayment of the debt unless there is any reasonable ground to order otherwise.

Where any claim for repayment of the debt is disputed, the official receiver shall conduct an interrogation and issue any of the following orders:

- (1) Dismiss the claim of repayment of the debt;
- (2) Approve the partial repayment of the debt;
- (3) Approve the whole repayment of the debt.

Any interested party may appeal the order of the official receiver by filing the appealing motion with the court within fourteen days after knowing the order of the official receiver.

In reviewing and adjudicating an appealing motion in paragraph three, the court shall have power to summon the file of claim for repayment of the debt and order the official receiver to submit the pronouncement regarding any issue as the court sees fit. Where the court finds it necessary to make an inquiry into any additional evidence, the court may do so as soon as necessary.

Section 9 Section 107 of the Bankruptcy Act B.E. 2483 shall be repealed.

Section 10 Section 108 of the Bankruptcy Act B.E. 2483 shall be repealed and replaced as follows:

“Section 108 Where the official receiver has approved a claim for repayment of the debt and it appears later that the official receiver has issued such order by mistake, the official receiver shall have power to dismiss such claim for repayment of the debt, or reduce the amount approved.”

Section 11 Section 130 (4) of the Bankruptcy Act B.E. 2483, which was revised by Bankruptcy Act (No. 5) B.E. 2542 (1999), shall be repealed and replaced as follows:

“(4) fee in collecting the property in accordance with Section 179(4).”

Section 12 Section 139 of the Bankruptcy Act B.E. 2483, which was revised by Bankruptcy Act (No. 6) B.E. 2543 (2000), shall be repealed and replaced as follows:

“Section 139 The Minister shall have power to appoint any one or more persons as he see fits, specifically or ex officio, as the official receivers, and to remove such persons from being the official receivers, including rule determining the criteria of the official receiver authorized in issuing an order to the claim for repayment of the debt.

The appointment or removal of such official receiver and the rule in accordance with paragraph one shall be published in the Government Gazette.”

Section 13 Section 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, and 171 of the Bankruptcy Act B.E. 2483 shall be repealed and replaced as follows:

“Section 161 Any debtor violating the provisions of Section 67(3) without a reasonable excuse shall be liable for a fine not exceeding Baht twenty thousand, or imprisonment not exceeding two months, or both.

Section 162 Any debtor violating the provisions of Section 64, 65, 79, or 80 without a reasonable excuse, or opposing the official receiver in the performance of his duties under Section 16(1), shall be liable for a fine not exceeding Baht forty thousand, or imprisonment not exceeding four months, or both.

Section 163 Any debtor doing any of the following acts shall be liable for a fine not exceeding Baht two-hundred thousand, or imprisonment not exceeding two years, or both:

(1) Violates the provisions of Section 23, 30, or 67(1) or (2) without a reasonable excuse,

(2) Omits to present material information, or makes false statement relating to his business or assets to the court, the official receiver, or the meeting of creditors, unless absence of any fraudulent intent can be proven, or

(3) Fails to inform the official receiver within the period of one month when it becomes known or there is a reason to believe that a false claim for repayment of the debt has been submitted in the bankruptcy case.

Section 164 During the one-year period prior to an application for the adjudication of bankruptcy of a debtor and thereafter, but before the issuance of an order placing the asset under receivership, any debtor shall be liable for a fine not exceeding Baht two hundred thousand or imprisonment not exceeding two years, or both if he:

(1) Removes, conceals, destroys, causes damage to or alters seals, accounting ledgers, or documents relating to his business or asset, or connives in such acts, unless absence of any intent to conceal the state of his affairs can be proven,

If it appears that seals, accounting ledgers, or documents are lost, damaged or altered, it shall be presumed that such was caused by the debtor,

(2) Omits to record material information, or makes false entries in the accounts or documents relating to his business or asset, or connives to do the same,

(3) Pledges, mortgages, or disposes of asset obtained by purchase on credit, for which the price has not yet been paid, unless such act is in an ordinary course of the debtor's business and absence of fraudulent intent can be proven, or

(4) Receives goods on credit from third parties on false pretences, or dishonestly conceals, transfers, or delivers his own asset, or creates or permitting others to create a right over his asset by dishonest means, or allows or conspires with others to let the court issue a judgment against him to pay a debt which he should not to pay.

Section 165 During the period from the date of the court order placing the asset under receivership until the date of discharge, any debtor shall be liable for a fine not exceeding Baht two hundred thousand or imprisonment not exceeding two years, or both if he:

(1) Receives from third parties goods on credit of a value of Baht two thousand upwards without informing such persons that his asset is under receivership or that he is bankrupt.

(2) Trades or does business under a name or a designation different from that under which his asset was placed under receivership, or under which he was adjudicated bankrupt, and in such case has received goods on credit from third parties, without informing such persons that his asset is under receivership or that he is a bankrupt.

(3) Trades or does business by using a name or a designation of another as a front.

(4) Trades or does business under a name or a designation different from that under which his asset was placed under receivership, or under which he was adjudicated bankrupt, without publishing in at least two daily newspapers the following particulars:

- a. His name and designation under which his asset was placed under receivership or under which he was adjudicated bankrupt,
- b. The sub-district (“tambon”) in which he traded or did business when his asset was placed under receivership,
- c. The name and designation under which he intends to trade or do business in the future,
- d. The nature of the trade or business intended to be conducted in the future, and
- e. The tambon in which the trade or business is to be conducted.

Section 166 A debtor who becomes indebted whilst trading or doing business at the time his asset is placed under receivership and does any of the following acts shall be liable for a fine not exceeding Baht one hundred thousand or imprisonment not exceeding one year, or both:

(1) When the official receiver investigates or the court conducts an inquiry, the debtor is unable to give satisfactory explanations for the considerable loss of his asset during the period of one year prior or subsequent to the application to adjudicate him as bankrupt but before the issuance of the order placing his asset under receivership.

(2) If the debtor creates debt for which a claim for repayment can be made in the bankruptcy case, without a reasonable ground to believe that such debt can be paid.

Section 167 A person who carries on a commercial operation mentioned in the act concerning the registration of commercial business, and has had no accounts for the past three years as from the date when his asset was placed under absolute receivership, which accounts can sufficiently demonstrate the commercial operation or his financial position as is required by the act concerning accounting methods in force at such time, shall be liable for fine not exceeding Baht one hundred thousand or imprisonment not exceeding one year, or both.

Section 168 In the period of six months prior to the application to adjudicate the debtor as bankrupt or thereafter, but before his discharge, any debtor who leaves or attempts to leave the Kingdom, taking with him asset valued more than Baht two thousand which, according to the Act, must be retained for the payment to his creditors, unless absence of fraudulent intent can be proven, shall be liable for a fine not exceeding Baht two hundred thousand or imprisonment not exceeding two years, or both.

Section 169 Upon the issuance of the court order placing the debtor’s asset under receivership, any debtor who conceals himself, or absconds from the address where he last lived or traded or did business, or leaves the Kingdom, with intent to avoid service of summons or notice or to avoid being examined or investigated with regard to his business or his assets, or creates difficulties or obstacles in the bankruptcy proceedings, shall be liable for a fine not exceeding Baht one hundred thousand or imprisonment not exceeding one year, or both.

Section 170 Upon the issuance of the court order placing the debtor’s asset under receivership, any debtor who acts fraudulently, or gives, or offers to give, or agrees to give any benefit to a creditor with the intent to obtain the consent of such creditor to his application for a composition, or to an agreement relating to the business or his bankruptcy, or to prevent any objection to his application for discharge from bankruptcy,

shall be liable for a fine not exceeding Baht two hundred thousand or imprisonment not exceeding two years, or both.

Section 171 Any creditor or his representative who, falsely in material matters, alleges or claims for repayment of the debt in a bankruptcy case or in a proposal for composition, or in any agreement relating to the asset of the debtor, unless absence of dishonest intent can be proven, shall be liable for a fine not exceeding Baht two hundred thousand or imprisonment not exceeding two years, or both.”

Section 14 Section 174 of the bankruptcy Act, B.E. 2483 shall be repealed and replaced by the following:

“Section 174 Any person who falsely alleges himself to be a creditor in order to look at or make copies of any documents relating to bankruptcy proceeding shall be liable for a fine not exceeding Baht five thousand.”

Section 15 Bankruptcy cases which have been filed before this Act becomes effective and of which a court hearing or proceedings by the official receiver remain pending shall be subject to the Bankruptcy Act B.E. 2483 which is in effect before the date this Act becomes effective.

Section 16 President of the Supreme Court and the Minister of Justice shall be in charge of this Act.

Countersigned by:

Prayuth Chan-ocha

Prime Minister