

Explanatory Memorandum of Draft Bankruptcy Act (No. ..) B.E.

As the Bankruptcy Act regarding reorganization framework has not covered the recent economic situation, especially, SME debtor including a natural person or a juristic person, i.e., a group of persons, a registered or unregistered partnership, a limited partnership, and a company. There are a great number of these debtors in the economic system who are financially distressed. It is necessary for them to be financially rescued in order to have a chance to commence the business reorganization process and avoid the liquidation. Hence, the draft of new business reorganization framework is necessary to be promulgated.

The draft Bankruptcy Act (No. ..) B.E. will add the new Chapter to the Bankruptcy Act; Chapter 3/2 Business Reorganization of the SMEs, from Section 90/91 – 90/128. The Legal Execution Department, Ministry of Justice of Thailand, proposed the draft Bankruptcy Act in June 2015. Recently, on 24th March 2016, the National Legislative Assembly approved the draft Bankruptcy Act to become law.

There are five key principles in the draft Bankruptcy Act;

1. The Cash-Flow Test Base or the Concept of “Inability to Pay”

It is the first time for Thailand to adopt the cash-flow test of insolvency, in other words, the draft law allows the debtor who faces "inability to pay" to submit a reorganization plan, instead of the balance-sheet test which allows debtor to go to the reorganization only when the asset value is less than outstanding liabilities.

2. Simplified and Expedite Process

The draft law applies the principle of “prepackaged plan” on which the creditors and debtors mutually agree before the commencement of the insolvency procedures. This principle simplifies and expedites the processes for SMEs, and saves costs as the debtor plans and administers the plan by itself for the period of 3 years.

3. Eligible Debtors

The draft law defines the debtor to be an individual or a juristic person, i.e., a group of persons, a registered or unregistered partnership, a limited partnership, and a company that engages in the small-and-medium-scaled business and registers with the Office of SMEs Promotion (OSMEP) or other official offices.

4. Nature and Value of Debts

The debts must be from the business activities, and not less than 2 million Baht for the individual debtor, 3 million Baht for the group of persons, registered or unregistered partnership, and limited partnership, and 3 but no more than 10 million Baht for the company.

5. Safeguards for Good-faith

The draft Bankruptcy Act sets forth safeguards to promote and scrutinize debtor's good faith in disclosure of asset information.
