

BANKRUPTCY ACT,

B.E. 2483 (1940)¹

In the name of KING ANANDA MAHIDOL, REX;

The Regency Council

(under the Notification of the President of the House of Representatives,

dated 4th August B.E. 2480 (1937));

Aditya Dibabha;

General Bijayendr Yodhin;

Enacted on the 30th Day of December B.E. 2480 (1937);

Being the 7th Year of the Present Reign.

Whereas the House of Representatives has passed a resolution that it is expedient to revise the law on bankruptcy to be more suited to the present time;

Be it, therefore, enacted by the King, by and with the advice and consent of the House of Representatives, as follows.

Section 1. This Act is called the “Bankruptcy Act, B.E. 2483 (1940)”.

Section 2. This Act shall come into force as from 1st January B.E. 2484 (1941).

The provisions of this Act shall apply to all bankruptcy cases brought the Courts as from the date of the entry into force of this Act, irrespective of whether the cause of action has arisen prior or subsequent thereto, and to all bankruptcy cases pending in the Courts or at the Receiver.²

Section 3. This Act shall apply in the areas of Phra Nakorn Province, Thonburi Province, Samut Prakarn Province and Nonthaburi Province and, when it is deemed appropriate, in the areas of such other Provinces and at such time as shall be prescribed in the Royal Decree.

Section 4. As from the date of the entry into force of this Act, there shall be repealed the Bankruptcy Act, R.E. 130 (1911), the Bankruptcy Amendment Act, B.E. 2470 (1927), the Bankruptcy

¹ Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project.--Approved version – but subject to final authorisation.

² Published in Government Gazette, Vol. 57, Page 958, dated 30th December B.E. 2483 (1940)

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Amendment Act, B.E. 2474 (1931) and all laws, rules and regulations insofar as they deal with matters governed by this Act or are inconsistent with the provisions of this Act.

Section 5. The Minister of Justice shall have charge and control of the execution of this Act and shall have the power to appoint and remove competent officials, issue Ministerial Regulations and lay down rules and regulations in connection with clerical affairs for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Section 6. In this Act, unless otherwise indicated by the context:

“Minister” means the Minister having charge and control of the execution of this Act;

“Receiver” includes the person entrusted by the Receiver to act on his behalf;

“Executing Officer” means the executing officer under the Civil Procedure Code;

“secured creditor” means the creditor having rights over the debtor’s property by virtue of a mortgage, a pledge or a right of retention or the creditor having a preferential right capable of enforcement in a nature similar to that enforceable by a pledgee;

“bankruptcy proceedings” means proceedings provided in this Act, whether pursued before the Court or with the Receiver as from the institution of an action until the finality thereof;

“judgment” includes the adjudication of the case by the Court by way of an order;

“receivership” means putting property into absolute or temporary receivership;

“resolution” means a resolution of the creditors holding rights over a majority of debts, being the creditors attending in person or by proxy the meeting of creditors and voting on such resolution;

“special resolution” means a resolution of the majority creditors holding rights over the debts equivalent to three quarters of the total value of debts owed to the creditors attending in person or by proxy the meeting of creditors and voting on such resolution;

“debtor’s insider”² means:

(1) a director, manager, managing partner, partner with unlimited liability, person responsible for the operation of business or auditor of the debtor;

(2) a shareholder holding shares in excess of five percent of the total number of shares already sold of the debtor’s undertaking;

² In section 6, the definition “insider of the debtor” is added by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

(3)³ the spouse or a non *sui juris* child of the debtor or of the person under (1) or (2);

(4) an ordinary partnership of which the debtor or the person under (1) or (2) or (3) is a partner;

(5) a limited partnership of which the debtor or the person under (1) or (2) or (3) is a partner with unlimited liability or is a partner with limited liability and with the aggregate shares held in excess of thirty percent of the total number of shares of the limited partnership;

(6) a limited company or a public limited company with the debtor or the person under (1) or (2) or (3) or the partnership under (4) or (5) holding shares in the aggregate number in excess of thirty percent of the total number of shares already sold of such company;

(7) a limited company or a public limited company with the debtor or the person under (1) to (6) holding shares in the aggregate number in excess of thirty percent of the total number of shares already sold of such company;

(8) a director, manager, managing partner, partner with unlimited liability, person responsible for the operation of business or auditor of an ordinary partnership, a limited partnership, a limited company or a public limited company under (4) or (5) or (6) or (7), as the case may be, or the spouse and a non *sui juris* child of such person;

“dishonest bankrupt”⁴ means a bankrupt convicted by the Court for the offence under section 163 to section 170 of this Act or adjudged bankrupt on account of or in connection with the commission of an offence of misappropriation or cheating under the Penal Code or the commission of the offence amounting to providing a loan constituting public fraud under law on loans constituting public fraud.

CHAPTER I

PROCEEDINGS FROM A BANKRUPTCY PETITION TO A DISCHARGE FROM BANKRUPTCY

Part 1

Bankruptcy Petition and Issuance of a Receivership Order

Section 7. An insolvent debtor may be adjudged bankrupt if such debtor has been domiciled within the Kingdom or has carried out business within the Kingdom, whether

³ In section 6, the definition “insider of the debtor” (3) is amended by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

⁴ In section 6, the definition “dishonest bankrupt” is amended by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

personally or through representation, at the time of the bankruptcy petition against the debtor or within the period of one year prior thereto.

Section 8. If there occurs any of the following circumstances, it shall be presumed that the debtor is insolvent:

(1) the debtor transfers his property or the right to its management to any other person for the benefit of all of his creditors, whether such act is carried out within or outside the Kingdom;

(2) the debtor transfers or delivers his property with fictitious intent or by fraud, whether such act is carried out within or outside the Kingdom;

(3) the debtor transfers his property or creates over such property any right *in rem* which, where the debtor is bankrupt, shall be deemed as favourable, whether such act is carried out within or outside the Kingdom;

(4) the debtor carries out any of the following acts for the purpose of delaying payment or preventing a creditor from receiving payment of the debt:

a. leaving the Kingdom or having left the Kingdom and remaining outside the Kingdom;

b. leaving the dwelling place where he resided or concealing himself in a dwelling place or absconding by any other means or closing his place of business;

c. diverting the property out of the jurisdiction of the Court;

d. allowing himself to be subjected to a judgment compelling payment of money which he ought not to make;

(5) the debtor is subject to seizure of property under a writ of execution or has no property susceptible of seizure for payment of the debt;

(6) the debtor makes to the Court a declaration, in any action, of his inability to pay the debt;

(7) the debtor makes a notification to any of his creditors of his inability to pay the debt;

(8) the debtor makes a debt composition proposal to at least two creditors;

(9) the debtor has received from the creditor a letter of demand at least twice with an interval of not less than thirty days and the debtor has failed to make payment of the debt.

Section 9.⁵ The creditor may initiate a bankruptcy action against the debtor only if:

(1) the debtor becomes insolvent;

⁵ Section 9 is amended by the Bankruptcy Act, (No. 3), B.E. 2526 (1983).

(2)⁶ the debtor who is a natural person is indebted to one or more plaintiff creditors in an amount of not less than one million Baht or the debtor who is a juristic person is indebted to one or more plaintiff creditors in an amount of not less than two million Baht; and

(3) the definite amount of such debt is determinable, whether it becomes due forthwith or at a future date.

Section 10.⁷ Subject to section 9, a secured creditor may institute a bankruptcy action against the debtor only if:

(1) the secured creditor is not prohibited from enforcing payment of the debt against the debtor's property in excess of the property given as security;

(2)⁸ the secured creditor makes a statement in the plaint that he shall, upon bankruptcy of the debtor, waive the security for the benefit of all creditors or makes an assessment of the security in the plaint and, after deduction of the amount of the debt therefrom, the deficit amounts to not less than one million Baht in case of the debtor who is a natural person or amounts to not less than two million Baht in case of the debtor who is a juristic person.

Section 11.⁹ The plaintiff creditor shall deposit with the Court money as security for expenses in an amount of five thousand Baht at the submission of a plaint in a bankruptcy action and may not withdraw such plaint unless upon permission by the Court.

The Court has the power to order the plaintiff creditor to deposit additional money as security for expenses as it deems appropriate.

Section 12. In the event of several plaints brought to make the same debtor bankrupt or to make each of joint debtors bankrupt, the Court has the power to order that they be joined for the purpose of being tried together.

Section 13. Upon acceptance by the Court of a bankruptcy action, the date of hearing shall be expeditiously fixed and the debtor shall be issued with a summons and furnished with a copy of the plaint for information at least 7 days prior to the date of hearing.

Section 14. At trial of a bankruptcy action upon the creditor's plaint, the Court must be satisfied of the facts as provided in section 9 or section 10. If the Court is so satisfied, the Court

⁶ Section 9 (2) is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁷ Section 10 is amended by the Bankruptcy Act, (No. 3), B.E. 2526 (1983).

⁸ Section 10 (2) is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁹ Section 11 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

shall issue an absolute receivership order against the debtor. But, if it is not so satisfied or it is proved by the debtor that he is in the position to make full payment or if there exists any other cause indicative of undesirability of making the debtor bankrupt, the Court shall dismiss the action.

Section 15. As long as the debtor is not placed under absolute receivership, any creditor may institute a bankruptcy action against such debtor. But, when the Court has, in any of the actions, issued an absolute receivership order against the debtor, the bankruptcy actions instituted by other creditors against the same debtor shall be struck out.

Section 16. Upon a bankruptcy action has been accepted by the Court, if the plaintiff creditor submits an *ex parte* application by motion and the plaintiff proves any of the following acts by the debtor, viz:

a. leaving, being about to leave or having left the territorial jurisdiction of the Court and remaining outside the territorial jurisdiction of the Court with the intent to prevent or delay payment of the debt to the creditor;

b. concealing, hiding, transferring, selling, disposing of or diverting property, seals, account books or documents which facilitate bankruptcy actions by all creditors from the jurisdiction of the Court or being about to carry out such act; or

c. committing or being about to commit fraud against creditors or committing or being about to commit any offence carrying penalty under this Act,

then, the Court has the power to issue an order to any of the following effects:

(1) instructing the Receiver to enter a dwelling place or place of business of the debtor from sunrise to sunset for the purpose of examining property, seals, account books or documents of the debtor and allowing the Receiver to inquire the debtor or issue a summons demanding the debtor's appearance for inquiries;

(2) instructing the debtor to give security to the Court's satisfaction that the debtor shall not abscond from the jurisdiction of the Court and shall appear before the Court whenever so ordered by the Court. If the debtor fails to give security, the Court has the power to issue an order for detention of the debtor for every period not exceeding one month, provided that the aggregate period shall not exceed six months;

(3) instructing an arrest of the debtor under a warrant of arrest to be issued for detention until the Court adjudges the debtor bankrupt or until the Court dismisses the action or until the debtor gives security to the satisfaction of the Court.

Section 17. Before the Court issues an absolute receivership order against the debtor, the plaintiff creditor may submit an *ex parte* application by motion for temporary

receivership against the debtor. Upon receipt of this motion, the Court shall forthwith proceed with an inquiry. If, in the opinion of the Court, there is a *prima facie* case, the Court shall issue a temporary receivership order against the debtor but may, before such order, require the plaintiff creditor to give security against loss sustained by the debtor in such an amount as deemed appropriate.

Section 18. If, whether in the Court's own volition or upon application by the debtor, there exists a reasonable cause to revise or amend the order under section 16 or section 17, the Court has the power to withdraw such order or issue an order otherwise as the Court deems appropriate.

Section 19. A receivership order shall be treated as a Court's warrant instructing the Receiver to seize seals, account books and documents of the debtor and all property in the possession of the debtor or other persons, which is capable of distribution in a bankruptcy action.

In seizing property, the Receiver has the power to enter any premises owned or possessed by the debtor and has the power to conduct demolition for an entry into such premises and to open any safe, cupboard or other storage place as is necessary.

Property seized under this section shall not be sold until the Court adjudges the debtor bankrupt except that the property is perishable or delay will involve a risk of loss or costs incurred will exceed the value of such property.

Section 20. If the Court considers that there is a reasonable cause to believe that property of the debtor is hidden in a household, a dwelling place or any other premises not belonging to the debtor, the Court has the power to issue a warrant of search to the Receiver or other Court officials, thereby authorising the performance of action in accordance with the terms of such warrant.

Section 21.¹⁰ Upon application by the Receiver, the Court has the power to instruct any agency or operator concerned with postal or telegraphic services or any other communications to furnish to the Receiver a telegramme, postal items, letters, writings, electronic records or any other communication records addressed to the debtor within the period not exceeding six months as from the date on which the receivership order is issued against the debtor.

Section 22. Upon the Court's receivership order against the debtor, the Receiver alone has the powers as follows:

¹⁰ Section 21 is amended by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

(1) to manage and dispose of the debtor's property or to do such act as is necessary for the accomplishment of the debtor's unfinished business;

(2) to collect and receive money or property which will devolve upon the debtor or which the debtor is entitled to receive from other persons;

(3) to conclude a compromise or institute any action or defend in any action in connection with the debtor's property.

Section 23. The debtor shall, upon knowledge of the receivership order, deliver all property, seals, account books and documents related to his property and business which are in his possession to the Receiver.

Section 24. Upon the Court's receivership order against the debtor, the debtor shall not do any act in relation to his property or business unless the act is done in accordance with the order or upon approval of the Court, the Receiver, the property administrator or the meeting of creditors, as provided in this Act.

Section 25. The Receiver shall join all civil actions concerning the debtor's property pending in Court at the time of the receivership order and the Court, upon the Receiver's application by motion, has the power to order a stay of such civil action or order otherwise, as it deems appropriate.

Section 26. As long as the Court has not issued an absolute receivership order against the debtor, a creditor may institute a civil action in relation to the debt of which payment is claimable under this Act. In such case, the provisions of the foregoing section shall apply *mutatis mutandis*.

Section 27. Upon the Court's absolute receivership order against the debtor, a creditor may request for payment of debt only in accordance with the procedures provided in this Act although the creditor is a judgment creditor or a creditor who has instituted a civil action which remains under trial.

Section 28. Upon the receivership order by the Court, the Receiver shall cause such order to be published in the Government Gazette and in at least one daily newspaper. In such publication, there shall be an indication of the bankruptcy petition, the date of the Court's order and the name, address and occupation of the debtor.

In the publication of the absolute receivership order, there shall also be a notification of the time within which all creditors may submit to the Receiver applications for repayment of debt.

Section 29. If it appears thereafter that a creditor has frivolously caused the Court to exercise the power provided in section 16 or section 17, the Court, upon the debtor's application by motion, has the power to order the creditor to make compensation to the debtor in such an amount as it deems appropriate. In such case, if the creditor fails to comply with the Court's order, the Court has the power to exercise enforcement against such creditor as if the creditor were a judgment creditor.

Part 2

Explanations as to Business and Property of the Debtor

Section 30. Upon the absolute receivership order by the Court, the debtor must take action as follows:

(1) within twenty four hours as from the debtor's knowledge of the order, the debtor must appear and take an oath before the Receiver and submit an explanation, in accordance with the printed form, as to whether the debtor has entered into any partnership with anyone and, if so, shall indicate the names and addresses of the partnerships as well as all partners;

(2) within seven days as from the date of the debtor's knowledge of the order, the debtor must appear and take an oath before the Receiver and submit an explanation, in accordance with the printed form, as to the debtor's business and property, with an indication of the reason for his insolvency, assets and liabilities, names, addresses and occupations of creditors, property given to creditors as security and the date on which such property has been so given, details of the property which will devolve upon the debtor at a future date, property of the spouse and property of other persons in the debtor's possession.

The period of time under this section may be, when a special reason arises, reasonably extended by the Receiver.

If the debtor is not present or unable to prepare the explanation under this section, the Receiver shall take the required action on the debtor's behalf or assist the debtor in preparing the explanation, as the case may be, and shall, for this purpose, have the power to hire any third person to assist as deemed appropriate on the condition that expenses incurred shall be deducted from the debtor's estate.

Part 3
Meeting of Creditors

Section 31. Upon the Court's absolute receivership order against the debtor, the Receiver shall summons a meeting of creditors as soon as possible for considering whether to accept the debt composition proposed by the debtor or whether to request the Court to adjudge the debtor bankrupt and considering the method for further management of the debtor's property. This meeting shall be called the first meeting of creditors.

The Receiver shall publish the date, time and venue of the first meeting of creditors in at least one daily newspaper not less than seven days in advance and shall also give a notice thereof to all known creditors.

Section 32. The Receiver may summons any subsequent meeting of creditors at such time as deemed appropriate or as provided by law or as ordered by the Court or upon a written request therefor made by creditors to whom the debts are owed in an aggregate amount of not less than one quarter of the amount of debts in respect of which applications have been made for repayment thereof.

The Receiver must, not less than three days in advance, give a notice of the date, time, venue and agenda of the meeting to the creditors who have submitted an application for repayment of debt and, in the case where the time within which creditors are allowed to submit an application for repayment of debt has not elapsed, the notice shall be given to the creditors who have not yet submitted an application for repayment of debt but whose names appear in the list prepared and furnished by the debtor or are revealed by other evidence.

Section 33. The Receiver shall preside over every meeting of creditors and there shall be minutes of the meeting signed by the Receiver for the purpose of official record.

Section 34. Creditors eligible for voting at a meeting of creditors must be those who are eligible for submitting applications for repayment of debt and have submitted applications for repayment of debt prior to the date of such meeting.

Any creditor may vote in person or by written proxy.

The creditor or his proxy may not vote on any matter which enables the creditor, his proxy or a partner of the creditor or of his proxy to obtain from the debtor's property any direct or indirect gain other than that justifiably obtainable as a share in the position as the creditor as with other creditors.

Section 35. In counting votes cast at each meeting of creditors, the Receiver shall inquire the creditors attending the meeting whether any of such creditors intends to raise an objection to the voting by any creditor whose application for repayment of the debt has not yet been accepted by an order of the Court. In the absence of such objection, the vote cast by such creditor shall also be counted.

If an objection is raised by any person to any particular application of repayment of the debt, the Receiver shall order whether and to what extent the voting on such debt is permissible. If the Receiver considers that such order may not be issued at that time, the Receiver shall note down the ensuing impediment and allow the creditor to vote for the time being on the condition that the voting by such creditor, if thereafter the Receiver issues an order disallowing it to any extent, shall be deemed as invalid *pro tanto*.

The order of the Receiver may be appealed against to the Court.

Section 36. When the Receiver considers that a resolution of a meeting of creditors is contrary to the law or common interests of all creditors, the Receiver may apply by motion to the Court and the Court may issue an order prohibiting any action in pursuit of such resolution, provided that such application must be submitted to the Court within seven days as from the date on which the meeting of creditors passed the resolution.

Part 4

Committee of Creditors

Section 37. A meeting of creditors may pass a resolution appointing a committee of creditors for the purpose of representing all creditors in the transactions related to the management of property of the debtor as provided in this Act.

The committee of creditors must consist of not less than three and not more than seven persons to be elected from creditors or creditors' proxies, provided that such creditors or their proxies may act as members of the committee of creditors only when the Court has issued an order accepting such creditors' applications for repayment of debt.

Section 38. A resolution of the committee of creditors shall be by a majority of votes of members attending the meeting and the presence of not less than one-half of members of the committee of creditors is required to constitute a quorum.

Section 39. A member of the committee of creditors vacates office on any of the following grounds:

- (1) resignation by a written notice to the Receiver;
- (2) being adjudged bankrupt by the decision of the Court or being adjudged an incompetent or quasi-incompetent person by an order of the Court;
- (3) being removed from office by a meeting of creditors, provided that a notice of the meeting to be held for such removal shall be given to all creditors not less than seven days in advance.

When the office of any member of the committee of creditors becomes vacant on any of the grounds hitherto indicated, the Receiver shall summons a meeting of the committee of creditors without delay for the purpose of electing another person to fill the vacancy.

Section 40. At the time when the election of a replacing member of the committee of creditors has not yet been held in accordance with the provisions of the foregoing section, the members of the committee of creditors may continue to perform duties if not less than one-half of the members of the committee shall remain.

Section 41. If no committee of creditors is appointed, any act required by this Act to be done with prior approval by the committee of creditors may be done with the approval by a meeting of creditors upon referral of the matter by the Receiver.

Part 5

Public Examination of the Debtor

Section 42. Upon completion of the first meeting of creditors, the Court shall urgently conduct a public examination of the debtor for the purpose of knowing the business and property of the debtor, the reason for insolvency and the debtor's conduct amounting to the commission or omission of any act constituting an offence under this Act or any other law relating to bankruptcy or amounting to such impropriety as to constitute a ground for the Court's refusal to grant unconditional discharge from bankruptcy.

The Receiver shall, at least seven days in advance, give the debtor and creditors a notice of the date and time of the scheduled public examination and publish the same in at least one daily newspaper.

Section 43. In the public examination, the debtor must take an oath and answer questions in connection with the matters specified in section 42 paragraph one which the Receiver, the creditors having submitted the application for repayment of debt or the persons authorised by such creditors are allowed by the Court to pose or which are posed by the Court as it deems

appropriate, and the Court shall take down the debtor's statements and, having read them to the debtor, have the same signed by the debtor, and such statements may be adduced as evidence against the debtor. For this purpose, the debtor may not be represented by his lawyer.

Upon sufficient examination of the debtor, the Court shall issue an order closing the examination and furnish the Receiver with one copy of the examination report. This order shall not preclude the Court's competence to order an additional examination of the debtor when there arises a reasonable cause.

Section 44. When it is apparent that the debtor becomes insane or has mental or physical infirmity such that, in the opinion of the Court, a public examination is rendered impossible, the Court has the power to order omission thereof or order an examination by any other method at any place as it is deemed appropriate.

Part 6

Pre-Bankruptcy Composition in Satisfaction of Debts

Section 45. The debtor shall, in case of his intention to make an agreement in connection with the settlement of the debt by means of partial payment or by any other means, prepare a proposal for a composition in satisfaction of debts in writing for submission to the Receiver within seven days as from the date of submission of the explanation as to the business and property under section 30 or within such time as fixed by the Receiver.

A proposal for a composition in satisfaction of debts must indicate the contents of the composition or the method of the management of business or property and the details as to the security or sureties, if any.

The Receiver shall summons a meeting of creditors for considering and passing a special resolution whether to accept such proposal.

Section 46. The acceptance of a composition in satisfaction of debts by a special resolution of a meeting of creditors does not bind all creditors until the Court issues an order approving it.

Section 47. The debtor may amend the proposal for a composition in satisfaction of debts at the meeting of creditors or during the trial by the Court if the Receiver or the Court considers such amendment as beneficial to the creditors in general.

Section 48. At a meeting of creditors for considering the proposal for a composition in satisfaction of debts, the creditor not attending the meeting may, in writing, vote *in absentia* provided that such writing must be received by the Receiver before the date of the meeting. In such case, it shall be deemed that such creditor has attended the meeting and voted in person.

Section 49. When the creditors have passed a special resolution accepting the debtor's proposal for a composition of debts, the debtor or the Receiver is entitled to apply to the Court for an order approving or disapproving it.

In fixing the date of hearing this proposal, the Receiver must be given such time as to give a notice thereof to the debtor and all creditors not less than seven days in advance.

Section 50. The Receiver shall submit to the Court a report on the composition in satisfaction of debts and the debtor's business, property and conduct not less than three days prior to the date of the hearing.

Section 51. The Court shall not consider the proposal for a composition in satisfaction of debts until a public examination of the debtor has been conducted except that, in the case of joint debtors' proposal for a composition in satisfaction of debts, even though the Court has not yet conducted a public examination of all debtors by reason that some of the debtors are unable to appear before the Court due to illness or presence outside the Kingdom, the Court, if it is reported by the Receiver that a public examination of such debtors is not necessary, has the power to consider the proposal for a composition in satisfaction of debts, provided that a public examination of at least one debtor has been conducted.

Section 52. In giving an order approving or disapproving a composition in satisfaction of debts, the Court shall consider the Receiver's report and the creditors' objections, if any.

The creditor who has submitted an application for repayment of the debt is entitled to raise an objection to the Court even though the creditor has, at the meeting of creditors, cast a vote accepting the composition.

Section 53. The Court shall not issue an order approving a composition in satisfaction of debts in the following cases:

(1) the composition contains no statement for the payment of debts in accordance with the order provided by the law in relation to the distribution of property of the bankrupt;

(2) the composition is not beneficial to creditors in general or causes advantages or disadvantages amongst creditors or there appears any of such facts as to, if the debtor is to be adjudged bankrupt, provide no ground for a discharge of the debtor from bankruptcy at all.

Section 54. If there appears any fact which, if the debtor becomes bankrupt, may allow only a conditional discharge of the debtor from bankruptcy, the Court may issue an order approving a composition in satisfaction of debts when the debtor gives security for the repayment of debt in the amount of not less than one quarter of the unsecured debts for which the creditors may apply for repayment.

In other cases, the Court may issue an order approving or disapproving a composition in satisfaction of debts as it deems appropriate.

Section 55. Upon the Court's order approving a composition in satisfaction of debts, the Receiver shall publish it in the Government Gazette and in at least one daily newspaper within seven days as from the date of the Court's order approving it.

Section 56. The composition in satisfaction of debts accepted by the meeting of creditors and approved by the Court binds all creditors with regard to the debts for which applications for repayment thereof are permissible but does not bind any creditor with regard to the debts from which the debtor may not, in accordance with this Act, be discharged by an order of discharge from bankruptcy, unless such creditor has consented to the composition in satisfaction of debts.

Section 57. Any creditor or the Receiver is entitled to apply to the Court for demanding the debtor's or the surety's compulsory performance of the terms of the composition in satisfaction of debts.

Section 58. In the composition in satisfaction of debts, if the manager of the debtor's property or business has been appointed for the purpose of payment of debts, the provisions of Chapter 4 relating to Procedures for Management of Property of the Debtor and Chapter 5 relating to the Receiver shall apply *mutatis mutandis*.

Section 59. A composition in satisfaction of debts has no effect of discharging from liability persons who are the debtor's partners or bear joint liability together with the debtor or stand surety for or are in the same position as the surety for the debtor.

Section 60. If the debtor defaults on payment of the debts as agreed upon in the composition in satisfaction of debts or it is, upon evidence, apparent to the Court that the

composition may not be conducted without injustice or will involve unreasonable delay or that the Court has issued an order approving it in consequence of deceit or dishonesty, the Court has the power to, upon the Receiver's report or any creditor's application by motion, terminate the composition and adjudge the debtor bankrupt, without prejudice to any act previously done in pursuit of the terms of such composition.

When the Court has rendered judgment hitherto indicated in the foregoing paragraph, the Receiver shall publish the judgment in the Government Gazette and in at least one daily newspaper. The publication shall indicate the name, address and occupation of the debtor and the date of the judgment and shall also indicate the time within which creditors may submit to the Receiver applications for repayment of debt created by the debtor from the date of the Court's order approving the composition in satisfaction of debts up to the date on which the debtor is adjudged bankrupt.

Part 7

Adjudication of Bankruptcy

Section 61. When the Court has issued an absolute receivership order against the debtor and the Receiver has reported that the creditors, at the first meeting of creditors or at the adjourned meeting, passed a resolution requesting the Court to adjudge the debtor bankrupt or passed no resolution or that no creditors attended the meeting or that the composition in satisfaction of debts failed to be approved, the Court shall adjudge the debtor bankrupt and the Receiver shall thence have the power to manage the bankrupt's property for distribution amongst all creditors.

The Receiver shall publish the adjudication in the Government Gazette and in at least one daily newspaper. The publication shall indicate the name, address and occupation of the debtor as well as the date of the adjudication by the Court.

Section 62. The bankruptcy of the debtor takes effect as from the date of the Court's receivership order.

Part 8

Post-Bankruptcy Composition in Satisfaction of Debts

Section 63. Upon the adjudication of bankruptcy, the debtor may propose a composition in satisfaction of debts. In such case, the provisions of Part 6 relating to Pre-Bankruptcy Composition in Satisfaction of Debts shall apply *mutatis mutandis*. But, if the debtor's

previous proposal for a composition in satisfaction of debts failed to achieve a successful result, the debtor shall not propose a composition in satisfaction of debts within the period of three months as from the date on which the last composition in satisfaction of debts failed to achieve a successful result.

If the Court approves the composition in satisfaction of debts, the Court has the power to issue an order cancelling the bankruptcy and restoring the debtor's power to manage his property or may issue any other order as it deems appropriate.

Part 9

Control over the Person and Property of the Debtor and Limitation of Rights

Section 64. The debtor who is under receivership must attend every meeting of creditors and answer questions posed by the Receiver, members of the committee of creditors or any creditor in matters in connection with the debtor's business, property or partners and must perform such act in connection with the business, property or the distribution of property amongst all creditors as reasonably ordered by the Receiver or the manager of property or as provided in this Act or as ordered by the Court, as the case may be.

Section 65. Upon the adjudication of bankruptcy, the debtor must, to the best of his ability, assist in the disposal and distribution of property amongst all creditors and, when required by the Receiver to make a contract of insurance on life, must allow a physical examination to be performed by a doctor on the debtor and answer questions and do such act as is necessary for that purpose.

Section 66. Upon the adjudication of bankruptcy, if it is reported by the Receiver that, or any creditor makes an *ex parte* application by motion and the Court is satisfied from the Receiver's report or the evidence adduced by the creditor that, the debtor has done any of the following acts:

(1) leaving, being about to leave or having left the territorial jurisdiction of the Court and remaining outside the territorial jurisdiction of the Court with the intent to prevent, delay or cause impediment to the bankruptcy proceedings, or

(2) committing or being about to commit fraud against creditors or committing or being about to commit any offence carrying penalty under this Act,

then, the Court has the power to issue a warrant of arrest against the debtor for his detention until the debtor gives security to the satisfaction of the Court, provided that the period of the detention shall not be in excess of six months.

Section 67. When the Court has issued a receivership order against the debtor or has adjudged the debtor bankruptcy and has not issued an order discharging the debtor from bankruptcy, then

(1) the debtor must request the Receiver to fix an amount of money as his own and his family's living expenses as may be suitable to the condition in life, provided that such amount of money shall, upon permission granted by the Receiver to the debtor, be payable out of the money acquired by the debtor during the bankruptcy and the debtor must remit all the remaining money or property to the Receiver within such time as fixed by the Receiver together with the revenue and expenses account;

(2) the debtor must, whenever he is entitled to any property, report it in writing to the Receiver within a reasonable time, with an indication therein of such details as may be most feasibly given, provided that in any case whatsoever, the debtor must declare the revenue and expenses account to the Receiver every six months; and

(3) the debtor shall not leave the Kingdom unless upon written permission by the Court or the Receiver and must, in case of any change of his address, notify the Receiver in writing of the new address within a reasonable time.

Part 10

Discharge from Bankruptcy

Section 67/1.¹¹ Upon the adjudication of bankruptcy, the bankrupt may be discharged from bankruptcy when the Court issues an order of discharge from bankruptcy under section 71 or at the expiration of the period of time under section 81/1.

Section 68.¹² Upon the adjudication of bankruptcy, the bankrupt may file an application by motion to the Court for an order of discharge from bankruptcy provided that a deposit of money shall be made with the Receiver in such an amount, not in excess of five thousand Baht, as the Receiver deems appropriate as security for fees and expenses.¹³

¹¹ Section 67/1 is added by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

¹² Section 68 is amended by the Bankruptcy Act, (No. 2), B.E. 2511 (1968).

¹³ Section 68 paragraph one is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

In fixing the date of hearing this application, the Receiver must be given such time as to give a notice thereof to the bankrupt and all creditors not less than fourteen days in advance and publish the same in at least one daily newspaper.

Section 69. The Receiver shall submit to the Court a report on the business, property and conduct of the bankrupt prior to or during the bankruptcy and furnish a copy of such report to the bankruptcy not less than seven days before the date of hearing the application for discharge from bankruptcy.

Section 70. In considering the application for a discharge from bankruptcy, the may hear explanations of the Receiver, creditors or creditors' representatives, the Receiver's report submitted under section 69 and the record of the public examination as conducted by that Court and the Court may require the bankrupt to testify under oath or consider evidence as the Court deems appropriate.

Section 71.¹⁴ The Court shall issue an order of discharge from bankruptcy when it considers that:

- (1) not less than fifty percent of the property has been distributed amongst the creditors who have submitted applications for repayment of debt; and
- (2) the debtor is not a dishonest bankrupt.

In giving the order of discharge from bankruptcy under paragraph one, the Court may fix conditions concerning property to be acquired at a future time provided that such conditions must not be beyond the period of time for the a discharge of such person from bankruptcy under section 81/1.

Section 72.¹⁵ (Repealed)

Section 73.¹⁶ (Repealed)

Section 74.¹⁷ (Repealed)

¹⁴ Section 71 is amended by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

¹⁵ Section 72 is repealed by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

¹⁶ Section 73 is repealed by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

¹⁷ Section 74 is repealed by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

Section 75.¹⁸ (Repealed)

Section 76. Upon the Court's order of discharge from bankruptcy, the Receiver shall publish it in the Government Gazette and in at least one daily newspaper.

Section 77. The order of discharge from bankruptcy has the effect of discharging the bankrupt from all debts of which applications for repayment are permissible, except:

(1) debts in relation to taxes, duties or goods taxes levied by the Government or a municipality;

(2) debts arising from dishonesty or fraud of the bankrupt or debts for which the creditors' failure to make a claim is attributable to dishonesty or fraud in which the bankrupt has involvement or conspiracy.

Section 78. The Court's order of discharge from bankruptcy has no effect of discharging from liability persons who are the bankrupt's partners or bear joint liability together with the bankrupt or stand surety for or are in the same position as the surety for the bankrupt.

Section 79. The bankrupt discharged from bankruptcy remains obligated to provide assistance in the disposal and distribution of his property in the custody of the Receiver, as the Receiver may require.

If the bankrupt fails to provide assistance, the Court has the power to revoke the order of discharge from bankruptcy without having prejudice to any act done subsequent to the discharge from bankruptcy and prior to such revocation order.

Section 80. In the order of discharge from bankruptcy on the requirement of payment of money by the bankrupt to the Receiver, the Court has the power to fix, as the annual living expenses of the bankrupt and his family, the amount of money deductible from property acquired subsequent to such order and require remittance of the remaining money or property to the Receiver for distribution amongst all creditors and fix the date for submission of the account indicating property acquired during each year to the Receiver.

The bankrupt who is discharged from bankruptcy on the requirement of payment of money to the Receiver is under the obligation to appear before the Receiver or the Court for the purpose of an inquiry or examination in connection with the acquired property, as required by the Receiver or the Court.

¹⁸ Section 75 is repealed by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

If the bankrupt fails to comply with the provisions in the first two paragraphs, the Court may, upon the Receiver's application, revoke the order of discharge from bankruptcy without having prejudice to any act done subsequent to the discharge from bankruptcy and prior to such revocation order.

Section 81. Upon revocation by the Court of the order of discharge from bankruptcy, the Receiver shall publish it in the Government Gazette and in at least one daily newspaper and shall notify all creditors of the time within which applications may be made for repayment of debt created by the debtor subsequent to the Court's order of discharge from bankruptcy and prior to such revocation order of the Court.

Section 81/1.¹⁹ Subject to section 81/2, a natural person adjudged bankrupt shall forthwith be discharged from bankruptcy upon the lapse of the three-year period as from the date of the adjudication of bankruptcy, except that:

(1) such person has previously been adjudged bankrupt and the period of five years has not elapsed as from the date of such previous adjudication of bankruptcy up to the date of the receivership order subsequently issued by the Court, in which case the period of time shall be extended to five years;

(2) such person is a dishonest bankrupt who is not of the description under (3), in which case the period of time shall be extended to ten years, except that in the case where there arises a special reason and such person has been adjudged bankrupt for not less than five years, the Court may issue an order of discharge from bankruptcy before the expiration of ten years upon application by the Receiver or the bankrupt; and

(3) such person is a dishonest bankrupt in consequence of or in connection with the commission of an offence of granting a loan tantamount to public fraud under the law on loans tantamount to public fraud, in which case the period of time shall be extended to ten years.

In the case where there arise more than one circumstance under (1), (2) or (3), the extension of the period of time shall be made on the basis of only one of such circumstances which carries the longest period.

The provisions of section 76, section 77 and section 78 shall apply to the discharge from bankruptcy under this section *mutatis mutandis*.

¹⁹ Section 81/1 is added by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

Section 81/2.²⁰ Before the expiration of the three-year period under section 81/1 paragraph one, the Receiver may apply to the Court for an order suspending the running of such period of time *pro tempore*.

Upon receipt by the Court of such application, the Court shall fix the date of an inquiry as a matter of urgency and furnish a copy of the application to the bankrupt not less than seven days prior to the appointed date.

Section 81/3.²¹ Upon the inquiry into the application under section 81/2, if the Court considers that the bankrupt, without any reasonable cause, fails to co-operate with the Receiver in the collection of property, the Court shall, with or without conditions, issue an order suspending the running of the period of time under section 81/1 as from the date of submission of the application by the Receiver or the date of the order of the Court up to the date fixed by the Court.

The suspension of the running of the period of time under paragraph one, regardless of the number of occasions on which the Court has ordered the suspension as applied for, shall not, when all suspended periods are computed altogether, exceed two years, and in any case whatsoever the Court shall not issue an order suspending the running of the period of time under section 81/1 (1), (2) or (3) or issue the order upon the lapse of the three-year period under section 81/1 paragraph one.

The order of the Court under this section shall be final.

Section 81/4.²² Upon the order of the Court under section 81/3, the bankrupt may, in case of change in circumstances, submit an application to the Court for cancellation or amendment of such order.

Upon receipt of such application, the Court shall fix the date of an inquiry and furnish a copy of the application to the Receiver for the purpose of giving a notice thereof to all creditors not less than seven days in advance.

The Court may issue an order cancelling or amending the order under section 81/3.

The order of the Court under this section shall be final.

²⁰ Section 81/2 is added by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

²¹ Section 81/3 is added by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

²² Section 81/4 is added by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

CHAPTER II
PROCEEDINGS IN CASE OF DEATH OF THE DEBTOR

Section 82. In the case of death of the debtor, the creditor may, if it appears that should the debtor have remained alive the creditor could institute a bankruptcy action against the debtor, institute an action requesting the administration of the debtor's estate in accordance with this Act, provided that the action must be brought before the Court within one year as from the date of death of the debtor.

Section 83. In instituting an action for the administration of the debtor's estate under the foregoing section, the creditor must request that heirs, the administrator of the estate or the controller of property be summoned to appear in the action in place of the deceased debtor.

If the person so summoned does not appear before the Court or appears before the Court but raises an objection that such person is not the heir, administrator of the estate or controller of property of the deceased debtor or that he is not obligated to accept such position under the law, the Court shall conduct an inquiry. If the Court considers that such person should appear in the action in place of the deceased debtor, the Court shall issue an order to the effect that such person represents such debtor or, otherwise, issue an order requiring the creditor to take further action in requesting the summoning of other persons to appear in the action in place of the deceased debtor.

Section 84. Upon the Court's judgment for the administration of the debtor's estate, the action and the administration of such estate shall be carried out in accordance with the provisions of this Act to the extent possible.

The person representing the deceased debtor is under the obligation to submit the explanation under section 30. Necessary costs incurred therein shall be taken out of the estate.

Section 85. Any act done by the heir, administrator of the estate or controller of property in connection with the estate shall, with respect to its validity, be deemed as the act of the debtor or the bankrupt in accordance with the provisions of this Act.

Section 86. When payment of all the debts has been made in full together with interest provided in this Act and all fees as well as costs, the Receiver shall deliver the remaining estate, if any, to the person representing the deceased debtor or to the administrator of the estate.

Section 87. If the debtor dies during the trial or when the Court has adjudged the debtor bankrupt, the proceedings shall be continued and the provisions of this Chapter shall also apply.

CHAPTER III

PROCEEDINGS IN CASE OF THE DEBTOR WITH THE STATUS AS AN ORDINARY PARTNERSHIP, A LIMITED PARTNERSHIP, A LIMITED COMPANY OR ANY OTHER JURISTIC PERSON

Section 88. In the case where the debtor is a registered ordinary partnership, a limited partnership, a limited company or any other juristic person, apart from an action capable of institution by a creditor before the Court for adjudging such juristic person bankrupt in accordance with the provisions in Chapter 1, the liquidator of such juristic person may file a petition with the Court for adjudging such juristic person bankrupt if it appears that, when full payments of the contribution or of the amount of shares have been made, assets are insufficient for repayment of debt.

Upon receipt by the Court of the petition, the Court shall forthwith issue an absolute receivership order against such juristic person and the meeting of creditors shall appoint one amongst themselves for the purpose of exercising rights and assuming duties as if such appointed creditor were the plaintiff creditor.

Section 89. Upon the Court's receivership order against the registered ordinary partnership or a limited partnership, the plaintiff creditor or the Receiver may file a petition by motion for adjudging bankrupt persons proved to become partners with unlimited liability in such partnership without instituting a new action.

Section 90. Upon the petition under the foregoing section, if the plaintiff creditor or the Receiver makes an *ex parte* application by motion for a temporary receivership order against partners and adduces evidence to the satisfaction of the Court that the application has a *prima facie* case, the Court has the power to issue a temporary receivership order against such persons, but the Court may, before giving such order, require the plaintiff creditor to give security against loss in such amount as the Court deems appropriate.

If it appears thereafter that the person against whom the temporary receivership order has been issued is not a partner, the Court shall issue an order withdrawing the receivership and, upon such person's application by motion, the Court has the power to order the plaintiff creditor requesting the receivership to make compensation to such person in such amount as it deems appropriate or may order the Receiver to make payment out of the partnership's assets.

If the plaintiff creditor fails to comply with the order of the Court as specified in the foregoing paragraph, the Court has the power to exercise enforcement against such creditor as if the creditor were a judgment debtor.

CHAPTER III/I

PROCEEDINGS RELATING TO REORGANISATION OF THE DEBTOR'S BUSINESS²³

Part 1

Definitions

Section 90/1. In this Chapter, unless otherwise indicated by the context:

“creditor” means the secured creditor or unsecured creditor;

“debtor” means the debtor that is a limited company, a public limited company or any other juristic person as prescribed in the Ministerial Regulation;

“petition” means a petition for the Court’s business organisation order;

“petitioner” means the person who submits a petition for the Court’s business organisation order;

“plan” means the business organisation plan;

“debtor’s shareholders” means the shareholders of a limited company or a public limited company that is the debtor and includes persons having such interests in any other juristic person that is the debtor as in the position similar to that of the shareholder;

“plan preparer” means the person who prepares the business organisation plan;

“plan administrator” means the person who manages the business and property of the debtor in accordance with the business organisation plan;

“debtor’s executives” means directors, managers or persons with authority to operate the debtor’s business on the date of the Court’s business organisation order;

“interim executives” means the debtor’s executives or other persons who are authorised by the Court’s order to manage the debtor’s business and property *pro tempore* during the period of the Court’s business organisation order while the plan preparer has not yet been appointed.

²³ CHAPTER III/I PROCEEDINGS RELATING TO REORGANISATION OF THE DEBTOR’S BUSINESS, consisting of section 90/1 to section 90/90, is added by the Bankruptcy Act, (No. 4), B.E. 2541 (1998).

Part 2

Petition for and Approval of Business Reorganisation

Section 90/2. The creditor, the debtor or a State agency under section 90/4 may file a petition for the reorganisation of the debtor's business in accordance with the provisions of this Chapter, regardless of whether a bankruptcy action has been instituted against the debtor or not.

In respect of any part of the proceedings not specifically provided in this Chapter, the provisions in other Chapters of this Act shall apply *mutatis mutandis*.

Section 90/3. When the debtor becomes insolvent and is indebted to one creditor or several creditors altogether in a definite amount of not less than ten million Baht, if there arises, whether such debt is due immediately or at a future time, a reasonable cause and prospect for the reorganisation of the debtor's business, the person under section 90/4 may file a petition with the Court for the business reorganisation.

Section 90/4. Subject to section 90/5, the following persons are entitled to file a petition with the Court for the business reorganisation:

- (1) one creditor or several credits altogether, with a definite amount of debt of not less than ten million Baht;
- (2) the debtor of the description under section 90/3;
- (3) the Bank of Thailand in the case where the debtor under section 90/3 is a commercial bank, a finance company, a finance and securities company or a credit foncier company;
- (4) the Office of Securities and Exchange Commission in the case where the debtor under section 90/3 is a securities company;
- (5) the Department of Insurance in the case where the debtor under section 90/3 is an insurance company providing insurances against loss or a life assurance company;
- (6) the State agencies which have the powers and duties to exercise oversight over the business of the debtor under section 90/3 that is a juristic person, provided that such State agencies and debtor shall be prescribed in the Ministerial Regulation.

A creditor of the debtor under (3), (4), (5) or (6) or the debtor itself may personally file a petition under section 90/3 upon obtaining written consent from the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under (6), as the case may be.

Application for consent shall be in accordance with the rules, procedures and conditions prescribed, by Notification, by the agency under paragraph two.

When the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under (6), as the case may be, has received the application for consent, such agency shall notify the result of its consideration to the applicant within fifteen days as from the date of receipt of the application. In the case of refusal to give consent, a brief account of reasons shall be given and the applicant shall have the right to appeal to the Minister exercising oversight over such agency within seven days as from the date of receipt of the result of the consideration. The Minister shall complete his decision on the appeal within fifteen days as from the date of receipt of the appeal. The decision of the Minister shall be final.

Section 90/5. The person under section 90/4 may not file a petition for the reorganisation of the debtor's business in the following cases:

- (1) the Court has issued an absolute receivership order against the debtor; or
- (2) the Court or the Registrar has issued an order for the dissolution or revocation of registration of the juristic person that is the debtor or registration has been made for dissolution of such juristic person or the juristic person that is the debtor must be dissolved on any other ground, whether the liquidation of such juristic person has been completed or not.

Section 90/6. The petition of the person under section 90/4 for the Court's business reorganisation order must clearly indicate:

- (1) the debtor's insolvency;
- (2) names and addresses of one or more creditors to whom the debtor is indebted in an aggregate amount of not less than ten million Baht;
- (3) a reasonable cause and prospect for business reorganisation;
- (4) names and qualifications of the plan preparer;
- (5) a letter of consent of the plan preparer.

A plan preparer may be a natural person, a juristic person, a group of persons, a creditor or the debtor's executive.

If the creditor is the petitioner, the petition must be accompanied by the names and addresses of other known creditors.

If the debtor is the petitioner, the petition must be accompanied by a list of all existing property and liabilities and the names as well as clear addresses of all creditors.

Section 90/7. In making a petition for business reorganisation, the petitioner must pay the Court fee of one thousand Baht and deposit with the Court money, in an amount of fifty

thousand Baht, as security for expenses to be borne by the petitioner in making the petition for business reorganisation at the time of filing the petition. If it is insufficient to cover such expenses, the Court may issue an order requiring the petitioner to deposit additional security money in such amount as the Court deems appropriate.

In the case where the petitioner refuses to deposit the additional security money under paragraph one, if the Court has not yet issued a business reorganisation order, it shall be deemed that the petitioner abandons the petition. But if the Court has issued a business reorganisation order, the Receiver shall summon a meeting of creditors and the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency which has the power and duty to exercise oversight of the operation of business of the debtor under section 90/3 and which has given consent under section 90/4, as the case may be, for the purpose of appointing any other creditor or the debtor or the person having given consent as the substitute petitioner as soon as possible. If there is no substitute petitioner or there is one but the said security money has not been deposited within one month as from the date on which the petitioner refused to deposit such security money as instructed by the Court's order, then the Court shall issue an order cancelling the business reorganisation order and the action shall be struck out of the case-list.

In the case where the creditor, the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, is the petitioner, the plan preparer shall reimburse, out of the debtor's property, the said expenses to the petitioner without delay after the Court has issued a business reorganisation order.

In the proceedings for business reorganisation, it shall be deemed that the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, is in the same position as the creditor.

Section 90/8. The petitioner may not withdraw the petition unless upon permission by the Court. But if the Court has issued a business reorganisation order, the Court shall not grant permission for a withdrawal of the petition.

In the case where the petitioner abandons the petition or is in default of appearance or the Court grants permission for a withdrawal of the petition, the Court shall, before ordering that the action be struck out of the case-list, publish it in at least one widely circulated daily newspaper not less than seven days in advance, in order for the same to be brought to the knowledge of all creditors and the debtor.

Section 90/9. Upon receipt of the petition, the Court shall proceed with an inquiry as a matter of urgency and shall publish the order accepting the petition as well as the date and time of the appointed inquiry in at least one widely circulated daily newspaper at least twice with an interruption of not more than seven days and shall furnish a copy of the petition to all known creditors and the Registrar of Partnerships and Companies or the Registrar of juristic persons concerned for recordation by the Registrar of the Court's order in the Register, and also to the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, provided that the same shall be furnished not less than seven days prior to the appointed date of the inquiry.

If the creditor is the petitioner, the petitioner shall furnish a copy of the petition to the debtor for the debtor's knowledge not less than seven days prior to the appointed date of the inquiry, and the debtor shall also submit to the Court an account listing all existing property and liabilities as well as the names and clear addresses of all creditors prior to the appointed date of the inquiry.

The debtor or the creditor may submit an objection not less than three days prior to the appointed date of the first inquiry. In the case of an objection to the plan preparer, the debtor or the creditor may elect to or not to nominate any other person as a plan preparer. In nominating a plan preparer, the letter of consent of the person nominated to be a plan preparer must also be submitted.

In the case of temporary receivership against the debtor, the petitioner shall also furnish a copy of the petition to the Receiver.

Section 90/10. In conducting an inquiry into the petition, the Court shall inquire in the manner of seeking the facts provided in section 90/3. If such facts are found to be present and there is a reasonable cause for business reorganisation, the Court shall, provided that the petitioner has filed the petition in good faith, issue a business reorganisation order; otherwise, the Court shall issue an order dismissing the petition.

In the case where no one raises any objection to the petition, the Court may, if it deems appropriate, dispense with the inquiry and issue a business reorganisation order.

Section 90/11. The Court shall conduct an inquiry into the petition in a manner free from any temporal interruption and without adjournment until the completion of the inquiry and then issue an order, except in the case of *force majeure*.

The petitioner and the person raising the objection shall appear before the Court on every hearing date. The party under the duty to prove in any hearing shall prepare evidence for ready presentation. If the petitioner or the person raising the objection does not appear or

fails to prepare evidence, it shall be deemed that such person no longer intends to pursue the petition or the objection or no longer intends to adduce evidence, as the case may be.

In the case where the person under the duty to prove makes an application explaining that crucial evidence in connection with an important issue in the action cannot be adduced to the Court at any particular hearing on account of an inevitable necessity pertaining to such evidence, the Court may, if it deems appropriate, order an adjournment of the adducing of such evidence, provided that such adjournment is permissible only on one occasion.

In the case where the petitioner or the person raising the objection is not under the duty to prove at any particular hearing, such person may, upon permission by the Court, elect not to appear before the Court at such hearing, in which case it shall be deemed that such person waives the right to cross-examine witnesses adduced at that hearing.

In the case where the petitioner or the person raising the objection failed to appear before the Court at any particular hearing, whether with or without permission from the Court, it shall be deemed that such person has had the knowledge of the proceedings of the Court at that hearing.

Section 90/12. Subject to section 90/13 and section 90/14, as from the date of the Court's order accepting the petition for consideration up to the date of the expiration of the period of time fixed for the implementation of the plan or the date of successful completion of the implementation of the plan or the date of the Court's order dismissing the petition or striking the action out of the case-list or cancelling the business reorganisation order or cancelling the business reorganisation or the absolute receivership against the debtor in accordance with the provisions of this Chapter, then:

(1) no action or application shall be brought before or filed with the Court for a judgment or an order dissolving the juristic person that is the debtor and the Court shall, if the action or application has been brought before it or filed with it, stay the trial of such case;

(2) the Registrar shall not issue an order dissolving or effecting registration of the dissolution of the juristic person that is the debtor and such juristic person shall not be dissolved by any other means;

(3) the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, shall not order revocation of a licence for the operation of business of the debtor or order the debtor to cease the operation of business, unless upon permission by the Court receiving the petition;

(4) no civil action shall be instituted against the debtor in connection with the debtor's property and no dispute in which the debtor may be liable or suffer loss shall be referred to arbitration for a decision if the obligation arose before the date of the Court's order approving the plan, and no

bankruptcy action shall be instituted against the debtor. In the case where an action has previously been instituted or a dispute has previously been referred to arbitration for decision, then a trial shall be stayed, unless the Court receiving the petition orders otherwise;

(5) a judgment creditor shall not have any execution undertaken against the debtor's property if the obligation to which the judgment relates arose before the date of the Court's order approving the plan. In the case where the execution has previously been undertaken, the Court shall stay such execution unless the Court receiving the petition orders otherwise or the execution has been completed before the Executing Officer became aware of the filing of the petition or the execution of the Court's judgment requiring the debtor's delivery of specific property has been completed prior to such date;

In the case where the property seized or attached is perishable or delay involves risks of loss or costs incurred will exceed the value of such property, the Executing Officer shall sell it by public auction or by any other reasonable means and set aside the proceeds. If the Court issues an order approving the plan, the Executing Officer shall deliver such proceeds to the plan administrator for expending them as expenses. If the Court issues an order dismissing the petition or striking the action out of the case-list or cancelling the business reorganisation order or cancelling the business reorganisation, the Executing Officer shall pay such proceeds to the judgment creditor. But, if the Court issues an absolute receivership order against the debtor and the proceeds remain, the same shall further be delivered to the Receiver.

(6) a secured creditor shall not exercise enforcement for payment of the debt against property given as security unless upon permission by the Court receiving the petition;

(7) a creditor legally entitled to exercise self-help enforcement for payment of the debt shall not seize or sell the debtor's property;

(8) an owner of the property which is essential for the operation of the debtor's business under a contract of hire-purchase, a contract of sale or any other contract carrying a condition or a time clause for a transfer of ownership or a contract of hire the agreed term of which has not yet expired shall not exercise the right to follow and recover the property in the possession of the debtor or any other person relying on the debtor's rights or institute an action for enforcement in connection with property and liabilities arising from such contract. If an action has previously been instituted, the Court shall stay its trial unless the Court receiving the petition orders otherwise or, after the date of the Court's business reorganisation order, the debtor, the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, commits, on two successive occasions, a default on the payment of hire-purchase remuneration, a price, remuneration for the use of the property or rent under the contract or commits a breach of any material part of the contract;

(9) the debtor shall not make any disposal, distribution or transfer, grant a lease, make repayment of debt, create debts or perform any action having the effect of creating any encumbrance over the debtor's property except that it is an action necessary for the continuance of normal operation of the debtor's business, unless otherwise ordered by the Court accepting the petition;

(10) with respect to orders issued by the Court as provisional measures for seizing or attaching the debtor's property or prohibiting any disposal, distribution or transfer thereof or putting the debtor's property into temporary receivership, being the property in existence prior to the date of the Court's order accepting the petition for consideration, the Court accepting such petition has the power to order suspension of the execution thereof or amendment or variation thereof in such manner as it deems appropriate. But, if the Court thereafter issues an order dismissing the petition or striking the action out of the case-list or cancelling the business reorganisation order or cancelling the business reorganisation, the Court shall issue an order in connection with such provision measures or temporary receivership order against the debtor as the Court deems appropriate;

(11) any provider of such public utilities as electricity, water or telephone shall not suspend services supplied to the debtor unless upon permission by the Court accepting the petition or unless, after the date of the Court's business reorganisation order, the debtor, the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, has failed to make two successive payments of charges accruing after the date of the Court's business reorganisation order.

The provisions of paragraph one does not preclude operators of public utilities from filing with the Court accepting the petition an application for an order protecting the applicants' interests as the Court deems appropriate.

Any judgment or order of the Court or any arbitral award which is contrary to or inconsistent with the provisions of any sub-section of paragraph one is not binding upon the debtor.

Any issuance of an order by the Registrar of Partnerships and Companies, the Registrar of any juristic person concerned or the person having the powers and duties in connection with the juristic person that is the debtor, any entry into a juristic act or any payment of debts which is done in a manner contrary to or inconsistent with the provisions of any sub-section of paragraph one is void.

Section 90/13. Any creditor or person aggrieved by the restriction of rights under section 90/12 may file with Court accepting the petition an application for an order amending, varying or cancelling the restriction of his rights under section 90/12 if the restriction of rights of the applicant:

- (1) is not necessary for the business organisation; or
- (2) fails to afford sufficient protection to rights of secured creditors.

Upon receipt of the application under paragraph one, the Court shall proceed with the consideration thereof as a matter of urgency. If there occurs any ground under paragraph one, the Court may issue an order as the Court deems appropriate for the protection of interests of the applicant and, where it is the case under (2), the Court may issue an order instructing any corrective action to ensure sufficient protection to be afforded to secured creditors.

Section 90/14. Any of the following action is deemed to be sufficient protection afforded to secured creditors:

- (1) payments have been made to secured creditors in the amount equivalent to the reduction of value of the property given as security which is subject to the restriction of rights under section 90/12 (6) on account of such restriction of rights;

- (2) payments have been made to secured creditors in compensation for the original security in the amount equivalent to the reduction of value of the property given as security which is subject to the restriction of rights under section 90/12 (6) on account of such restriction of rights; or

- (3) there has been taken any other action to which secured creditors have given consent or which, in the opinion of the Court, enables secured creditors to receive repayments in the amount equivalent to the value of the property given as security at the time of the filing of the petition for business reorganisation together with interest and benefits under contracts upon completion of the action in accordance with this Chapter.

Section 90/15. If the period of prescription or the period of time in connection with the proceedings and execution or the period of time in connection with the referral of disputes to arbitration which is or are prohibited from being pursued or suspended under section 90/12 expires before the expiry date of the period of time fixed for the implementation of the plan or the date of successful completion of the implementation of the plan or the date on which the Court issues an order dismissing the petition or striking the action out of the case-list or cancelling the business reorganisation order or cancelling the reorganisation of the debtor's business or the absolute receivership against the debtor in accordance with the provisions of this Chapter or is due to expire within six months as from such date, such period of prescription or period of time shall be treated as not having expired until the expiration of one year as from such date, as the case may be. But, if under the law such period of prescription or period of time is shorter than one year, such shorter period of prescription or period of time shall apply in lieu of such one-year period.

Part 3

Plan Preparer Appointment

Section 90/16. In the case where the Minister deems appropriate for the purposes of business reorganisation, the Minister may issue Ministerial Regulations in connection with the registration and prescription of qualifications of plan preparers and plan administrators.

Section 90/17. In considering the appointment of a plan preparer, if the debtor or the creditor raising an objection does not nominate any other person as the plan preparer, the Court may, upon its business reorganisation order, appoint the person nominated by the petitioner as the plan preparer. If the Court considers that the person nominated by the petitioner is not suitable for being appointed as the plan preparer or the debtor or the creditor raising an objection nominates any other person as the plan preparer, the Court shall issue an order instructing the Receiver to summon a meeting of creditors as soon as possible for considering and electing the plan preparer.

In the case where the debtor has not nominated the plan preparer, a resolution electing the plan preparer must be the resolution passed by creditors to whom the majority amount of debts is owed and who cast votes on such resolution. But, in the case where the debtor nominates the plan preparer as well, the plan preparer as nominated by the debtor shall be in charge of the preparation of the plan unless a resolution is passed, by the creditors to whom debts are owed in the amount of not less than two-thirds of the total amount of debts owed to the creditors casting votes on such resolution, to the effect that another person shall become the plan preparer. In casting votes under this section, secured creditors may vote at the full amount of the debts.

At a meeting of creditors for considering the election of the plan preparer, if the meeting has successfully passed a resolution electing the plan preparer and the Court gives approval thereto, the Court shall appoint such person as the plan preparer. If the Court does not give approval thereto, the Court shall issue an order instructing the Receiver to summon another meeting of creditors for electing any person nominated by the creditor or the debtor as the plan preparer.

If the meeting of creditors is unable to pass a resolution electing the plan preparer, the Receiver shall summon a meeting of creditors for considering and electing the plan preparer on another occasion, save that, in the case where the Court deems appropriate, the Court may issue an order cancelling the business organisation order.

At the meeting of creditors under paragraph three or paragraph four, if the meeting has successfully passed a resolution electing the plan preparer, the Court shall appoint such person as the plan preparer save that, in the case where there exists a justifiable reason for not appointing such person as the plan preparer or where the meeting is unable to pass a resolution electing the plan preparer, the Court shall issue an order cancelling the business reorganisation order.

The Receiver shall report the result of every meeting of creditors held for electing the plan preparer to the Court within three days as from the date of the meeting for further consideration and orders by the Court.

Any nomination of the plan preparer to the meeting of creditors shall also be accompanied by a letter of consent of the person nominated as the plan preparer.

Section 90/18. The Receiver shall publish the date, time and venue of the meeting of creditors to be held for the election of the plan preparer in at least one widely circulated daily newspaper not less than seven days in advance and shall also notify the same to the debtor and all creditors indicated in the list submitted to the Court by the debtor or the creditors and also to other known creditors.

The Receiver shall preside over the meeting of creditors and there shall be minutes of the meeting signed by the Receiver to be kept for an evidential purpose.

Section 90/19. At every hearing by the Court and at every meeting of creditors, the debtor shall appear before the Court, attend the meeting and answer questions posed by the Court, the Receiver, the interim executive, the plan preparer, the plan administrator, the interim plan administrator or any of the creditors on matters in connection with business and property of the debtor. In such case, the debtor may give any opinions to the Court or the meeting.

Upon request by the debtor, the Court or the Receiver may grant permission for the debtor's non-appearance at any hearing of the Court or for non-attendance at any meeting of creditors, as the case may be.

The provisions of paragraph one and paragraph two shall also apply *mutatis mutandis* to the interim executive, the plan preparer, the plan administrator and the interim plan administrator with respect to the hearing of the Court and the meeting of creditors as long as such persons continue to assume the duties by virtue of such offices.

Section 90/20. In the case where the Court issues a business reorganisation order but no plan preparer has been appointed, the powers and duties of the debtor's executives in the management of business and property shall terminate. The Court shall issue an order appointing one

or more persons or the debtor's executive as an interim executive or interim executives charged with the powers and duties to carry out further management of the debtor's business and property under supervision of the Receiver until the appointment of the plan preparer is made. During the time in which the appointment of the interim executive is unable to be made, the Receiver shall have the power to manage the debtor's business and property *pro tempore*.

In exercising supervision, the Receiver may fix powers and duties and order the interim executive to prepare explanations on accounting matters, financial matters or any matters in connection with the management of business and property or order performance or omission of any act as he deems appropriate.

When the Court deems appropriate or when an application is made by the Receiver, the Court shall have the power to issue an order instructing the interim executive to be discharged from the powers and duties. In such case, the Court may issue an order appointing a new interim executive to perform duties. In the absence of the Court's order appointing a new interim executive, the Receiver shall have the power to manage the debtor's business and property *pro tempore* as specified in paragraph one.

The Court shall notify the Receiver of the business reorganisation order and the order appointing the interim executive or discharging the interim executive from the powers and duties and the Receiver shall publish the business reorganisation order in the Government Gazette and in at least two widely circulated newspapers and expeditiously notify such order to the Registrar of Partnerships and Companies or the Registrar of juristic persons concerned for the purpose of recording such order of the Court in the register and also to the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4 (6), as the case may be, for information.

Section 90/21. Subject to section 90/42 and section 90/64, in the case where the Court issues a business reorganisation order but the appointment of the plan preparer has not yet been made, all rights under the law of the debtor's shareholders shall terminate, save for the right to receive dividends, and such rights shall vest in the interim executive or the Receiver, as the case may be, until appointment of the plan preparer is made.

The provisions of section 90/12 (9) shall apply to the interim executive and the Receiver *mutatis mutandis*.

Upon the knowledge of the business reorganisation order, the debtor's executive must deliver property, seals, account books and documents related to the debtor's property, liabilities and business to the interim executive or the Receiver, as the case may be, as soon as possible. For this purpose, the interim executive or the Receiver shall also have the power to

instruct possessors of the said property, seals, account books and documents to deliver the same to the interim executive or the Receiver.

The interim executive discharged by the Court's order from the powers and duties shall also have the duty in accordance with the provisions of paragraph three *mutatis mutandis*.

Section 90/22. Creditors entitled to vote at a meeting of creditors for electing the plan preparer must be the creditors who may apply for repayment of debt in the business reorganisation, provided that the debtor established the said legal relation prior to the Court's business reorganisation order, even though such debt does not yet become due or is subject to a condition, and the creditors have, in accordance with the form prescribed by the Receiver, declared their intention to attend the meeting and presented evidence of their creditorship to the satisfaction of the Receiver prior to the date of the meeting.

The creditors and debtor may make a request to the Receiver for an examination of the evidence of creditorship.

Creditors may vote in person or by proxy made in writing.

Section 90/23. At a meeting of creditors for electing the plan preparer, the Receiver shall inquire the debtor and creditors attending the meeting whether any objection is intended to be raised to the voting by any particular creditor. If an objection is raised to the voting by any particular creditor, the Receiver shall inquire the person raising the objection, the creditor against whom the objection is raised and the debtor as to the matters to which the objection relates if such persons attend the meeting and shall then issue an order as to whether, and to what extent, such creditor is allowed to vote in accordance with the amount of the debt.

The order of the Receiver under paragraph one shall be final and shall have the mere effect of allowing or disallowing the creditor to vote at the meeting of creditors without resulting in any change in the resolution electing the plan preparer as reported to the Court by the Receiver and without prejudice to the creditor's right to receive payment.

Section 90/24. If the Court issues an order appointing the plan preparer, the Court shall notify such order to the plan preparer, the Receiver, the debtor's executive and the interim executive without delay. The powers and duties of the plan preparer shall commence on the date of such order by the Court, and the powers and duties of the Receiver, the debtor's executive or the interim executive shall terminate.

Upon the Court's order appointing the plan preparer, the provisions of section 90/20 paragraph four and section 90/21 paragraph three shall apply *mutatis mutandis* and the

Receiver shall notify such order to all creditors indicated in the list submitted to the Court by the debtor or creditors and to other known creditors.

In the publication and written notification of the order under paragraph two, an indication shall also be made of the time within which all creditors may submit to the Receiver, in accordance with the prescribed form, their applications for repayment of debt in the business reorganisation.

Section 90/25. Subject to section 90/42 and section 90/64, when the Court has issued an order appointing the plan preparer, the powers and duties to manage the debtor's business and property and all rights under the law of the debtor's shareholders shall, save for the right to receive dividends, devolve on the plan preparer and the provisions of section 90/12 (9) shall apply to the plan preparer *mutatis mutandis*.

Part 4

Application of Repayment of Debt in Business Reorganisation

Section 90/26. A creditor may only apply for repayment of debt in the business reorganisation by complying with the procedures specified in this Part although the creditor is a judgment creditor or a creditor who has instituted a civil action which remains at trial, provided that the application for repayment of debt, together with a copy thereof, must be submitted to the Receiver within one month as from the date of the publication of the order appointing the plan preparer, and the Receiver shall furnish the copy of the application for repayment of debt to the plan preparer without delay.

Any person who suffers loss because a transfer of property or any act is cancelled under section 90/41 or because the plan administrator refuses to accept property or contractual rights under section 90/41 *bis* has the right to apply for repayment, in the business reorganisation, of the original debt or payment of damages, as the case may be, within the time limit under paragraph one, provided that the computation of time shall commence as from the date on which the right to apply for repayment of debt in the business reorganisation is exercisable or, in the event of litigation *ex casu*, as from the date of the finality of the action.²⁴

The provisions of section 91 paragraph two, section 105 and section 108 and the provisions of Chapter 8 Part 2 on Fees shall apply to the application for repayment of debt in the business reorganisation *mutatis mutandis*.

²⁴ Section 90/26 paragraph two is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 90/27. A creditor may apply for repayment of debt in the business reorganisation if the cause of the debt arose prior to the date of the Court's business reorganisation order even though such debt does not yet become due or is subject to a condition, with the exception of the debt arising in contravention of any prohibition by law or good morals or the debt incapable of legal action for enforcement thereof.

The person entitled to apply for repayment of debt under section 101 may submit an application for repayment of debt in the business reorganisation in respect of the amount against which he may exercise the right of recourse at a future time except that the creditor has already exercised the right to apply for repayment of the debt in its full amount.

With respect to the debt which the Receiver or the interim executive has created or the debt for which the debtor is to be liable under section 90/12 (8) or (11) or the debt related to taxes or duties or any other debt of a similar nature, being the debt arising from the date of the Court's business reorganisation order up to the date of the Court's order appointing the plan preparer, being the debt arising as from the date of the Court's business reorganisation order up to the date of the Court's order appointing the plan preparer, the creditor has the right to receive repayment within the time specified in the plan without any need to apply for repayment thereof in the business reorganisation, provided that such creditor must address a written request to the plan preparer for issuing the creditor with a certificate in recognition of his right prior to the date of the meeting of creditors held for considering the plan. The plan preparer who intends to deny the creditor's right must make such denial in writing to the creditor within fourteen days as from the date of receipt of the creditor's written request, failing which it shall be deemed to be the recognition of the creditor's right to which the request relates. If the creditor fails to address a written request to the plan preparer for issuance of a certificate in recognition of the creditor's right or the plan preparer makes a written denial of the creditor's right within the aforesaid time limit, such creditor may submit an application for repayment of debt in the business reorganisation to the Receiver within fourteen days as from the date of the meeting of creditors for considering the plan or the date on which the creditor receives such denial, as the case may be.

Section 90/28. Subject to section 90/12 (6), section 90/13 and section 90/14, a secured creditor may exercise the right to enforce the debt out of the property given as security with no need to apply for repayment of debt in the business reorganisation provided that the Receiver or the plan preparer must be allowed to examine such property.

Section 90/29. A creditor, the debtor or the plan preparer may address to the Receiver a request for an examination of, or may make a challenge against, applications for repayment of debt in the business reorganisation, provided that it must be done within fourteen

days as from the date of the expiration of the time limit fixed for the submission of applications for repayment of debt.

Section 90/30. If any particular creditor's application for repayment of debt in the business reorganisation is not challenged by any other creditor, the debtor or the plan preparer, such creditor shall have the right to vote in such full amount of debt as indicated in the application for repayment of debt. If a challenge is made, the Receiver shall urgently conduct inquiries and issue an order as to whether, and in what amount of debt, such creditor may be allowed to vote, and the provisions of section 90/23 paragraph two shall apply *mutatis mutandis*.

Section 90/31.²⁵ For the purpose of the computation of the amount of debts upon which voting is to be based, if the debt in question is fixed in a foreign currency, there shall be a conversion of the amount into a Thai currency on the date of the Court's business reorganisation order by reference to the daily exchange rate of the Bank of Thailand.

Section 90/32. If any particular creditor's application for repayment of debt in the business reorganisation is not challenged by any other creditor, the debtor or the plan preparer, the Receiver shall have the power to issue an order approving the repayment of debt unless there is a reasonable cause for ordering otherwise.

If any particular creditor's application for repayment of debt in the business reorganisation is challenged, the Receiver shall conduct inquiries and issue any of the following orders:

- (1) dismissing the application for repayment of the debt;
- (2) approving full repayment of the debt;
- (3) approving partial repayment of the debt.

Any interested person may file a motion for challenging the order of the Receiver under paragraph one or paragraph two with the Court within fourteen days as from the date of the knowledge of the Receiver's order.

Section 90/33. If the creditor entitled to apply for repayment of debt in the business reorganisation is indebted to the debtor at the time of the business reorganisation order, such creditor may exercise the right of set-off, unless the creditor has acquired a claim against the debtor after the Court has issued the business reorganisation order.

²⁵ Section 90/31 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Part 5**Explanations on the Debtor's Business and Property**

Section 90/34. Within seven days as from the date of the knowledge of the order appointing the plan preparer, the debtor's executive shall submit to the plan preparer, in the prescribed form, the explanation under section 90/35 on the debtor's business and property as already certified by the debtor's executive.

Upon the application by the debtor's executive for an extension of time submitted with a justifiable cause before the expiration the aforesaid time, the plan preparer may grant an extension of time as he deems appropriate for a period not exceeding thirty days.

If the debtor's executive fails or is unable to prepare the explanation, the plan preparer shall instead prepare it and, for this purpose, shall have the power to hire a third person for rendering such assistance as the plan preparer deems appropriate, provided that costs incurred shall be deducted from the debtor's property.

Section 90/35. The explanation on the debtor's business and property must clearly indicate the following particulars on the date of the acceptance by the Court of the petition for consideration:

- (1) the debtor's business;
- (2) the debtor's assets, liabilities and obligations towards third persons;
- (3) property charged as security in favour of creditors and the date of its being charged as security;
- (4) property of other persons in custody of the debtor;
- (5) any status as a shareholder in any other company or juristic person or as a partner in any other partnership;
- (6) names, occupations and detailed addresses of all creditors;
- (7) names, occupations and detailed addresses of the debtor's debtors;
- (8) details of the property which will devolve upon the debtor at a future time;
- (9) such other information as the plan preparer deems it appropriate to be additionally declared.

The explanation on the debtor's business and property shall be presumed to be correct evidence capable of being set up against the debtor.

Section 90/36. The interim executive or the Receiver must prepare the explanation on the debtor's business and property to be submitted to the plan preparer under

section 90/35 during the period in which he has the power to manage the business *pro tempore* and section 90/34 shall apply *mutatis mutandis*.

Section 90/37. In the case of necessity for the purposes of the preparation and administration of the plan, the plan preparer, the plan administrator or the interim plan administrator may apply to the Court for issuance of a warrant summoning persons who are or were the debtor's executives, the debtor's employees, the debtor's auditors, the interim executives or any persons who are found or suspected to have the debtor's property in possession or believed to be indebted to the debtor or are in the position to give statements in connection with the debtor's business or property to appear before the plan preparer, the plan administrator or the interim plan administrator for making inquiries or may apply to the Court for ordering such persons to furnish any document or physical evidence which is in their custody or within their authority and related to the debtor's business or property to the plan preparer, the plan administrator or the interim plan administrator.

For the purposes of the preparation and administration of the plan, the Court or the Receiver may issue a warrant summoning the persons under paragraph one to appear for an inquiry or investigation or may order such persons to furnish any document or physical evidence.

If any person wilfully resists the warrant or the order of the Court or the Receiver, the Court has the power to issue a warrant of arrest for detention of such person until the order of the Court or the Receiver is complied with.

Section 90/38. Upon application by the plan preparer, the plan administrator or the Receiver, the Court has the power to issue a decree compelling persons having admitted their indebtedness to the debtor or having admitted their possession of the debtor's property to make repayment or deliver the property to the plan preparer, the plan administrator or the Receiver within the time deemed appropriate by the Court. If the decree is not complied with, the plan preparer, the plan administrator or the Receiver may apply to the Court for issuance of a writ of execution as if such persons were judgment debtors.

Section 90/39. When it appears that the debtor has the right to demand any person to make repayment of debt or deliver the property to the debtor and such person does not admit his indebtedness to the debtor or his possession of the debtor's property, the plan preparer or the plan administrator shall notify it to the Receiver for further proceeding.

The Receiver shall serve such person a written notice demanding repayment of debt or delivery of the property to which the notice relates, with a statement therein that if such person intends to deny indebtedness such denial refusal shall, within fourteen days as from the

date of receipt of the notice, be made in writing to the Receiver with an indication of supporting reasons therefor, failing which such person shall conclusively be deemed to have been indebted to the debtor as stated in the notice.

If the person in receipt of the notice makes with the Receiver a denial of the indebtedness within the time limit under paragraph two, the Receiver shall conduct an inquiry. If the Receiver considers that such person is not indebted, the Receiver shall notify it to the plan preparer or the plan administrator and to such person. If the Receiver considers that such person is indebted in a certain amount, the Receiver shall, by a written confirmation, notify it to the person liable, with a statement therein that such person, if an objection is intended to be raised, shall file an objection with the Court within fourteen days as from the date of receipt of the confirmation.

If the person in receipt of the written confirmation files, by motion, an objection with the Court within the time limit under paragraph three, the Court shall consider it. If the Court is satisfied that the indebtedness exists, the Court shall issue a decree demanding such person to make repayment or deliver the property to the plan preparer or the plan administrator. If the Court considers that the indebtedness does not exist, the Court shall issue an order striking it out of the list of debtors.

If the person in receipt of the notice from the Receiver addresses no denial to the Receiver or files with the Court no objection within the aforesaid time limit, the Receiver may apply to the Court for a decree compelling such person to perform the obligation within such time as the Court deems appropriate.

If such person fails to comply with the decree issued by the Court, the Receiver may apply to the Court for issuance of a writ of execution as if such person were the judgment debtor.

In the case where the person who is demanded to perform files an objection with the Court, the Receiver may apply, by motion, to the Court for an order seizing or attaching the property of the person filing the objection *pro tempore* before issuing an order with respect to such debt.

Part 6

Cancellation of Previously Executed Juristic Acts

Section 90/40. The plan preparer, the plan administrator or the Receiver may apply, by motion, to the Court for cancellation of fraudulent acts in accordance with the Civil and Commercial Code.

If the juristic act intended to be cancelled on the ground of fraud arose during the period of one year before the date of filing the application and thereafter or constitutes a gratuitous act or constitutes an act under which the debtor has received unreasonably small

remuneration, it shall *prima facie* be presumed to be an act whereby the debtor or the person enriched thereby knew that it would be prejudicial to the creditor.

Section 90/41.²⁶ When it appears that there existed a transfer of property or any act done by the debtor or done with the debtor's consent during the period of three months before the filing of the application and thereafter with the intent to enable any creditor to have an advantage over other creditors, then the plan preparer, the plan administrator or the Receiver may file an application by motion to the Court. In this connection, the Court has the power to order a cancellation of such transfer or such act.

If the creditor who has become advantaged is the debtor's insider, the Court has the power to order a cancellation of such transfer or such act under paragraph one as done during the period of one year before the filing of the application and thereafter.

The cancellation of the transfer or the act under this section is not prejudicial to rights of third persons acquired in good faith and for value before the filing of the application.

Section 90/41 bis.²⁷ Within the period of two months as from the date of the plan administrator's knowledge of the Court's order approving the plan, the plan administrator has the power to refuse to accept the debtor's property or contractual rights bearing unreasonably greater burdens than benefits to be derived therefrom, as specified in the plan.

Any creditor or any person who is injured by an act done by the plan administrator under this section may file an application by motion to the Court within fourteen days as from the date of the knowledge of such act. The Court has the power to issue an order affirming, overruling or correcting such act or any order as the Court deems appropriate.

Any person who suffers injury under this section has the right to apply for repayment of debt in the business reorganisation in respect of the damages concerned.

Part 7

Meetings of Creditors for Considering the Business Reorganisation Plan

Section 90/42.²⁸ In a plan, there shall be the following particulars at the minimum:
(1) reasons for the business reorganisation;

²⁶ Section 90/41 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

²⁷ Section 90/41 *bis* is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

²⁸ Section 90/42 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

- (2) details of the debtor's property, liabilities and obligations at the time of the Court's business reorganisation order;
- (3) the principles and methods for the business reorganisation:
 - (a) steps of the business reorganisation;
 - (b) payment of debt, extension of time for payment of debt, reduction of the amount of debt and classification of creditors;
 - (c) reduction and increase of capital;
 - (d) creation of debts and fund raising, including sources of funds and conditions of such debts and funds;
 - (e) management and exploitation of the debtor's property;
 - (f) conditions for payment of dividends and any other benefits;
- (4) redemption of security in the case where there are secured creditors and liability of the sureties;
- (5) ways to solve problems in the event of temporary lack of liquidity in the course of the implementation of the plan;
- (6) practices to be pursued in the event of an assignment of claims or a transfer of debt;
- (7) the name, qualifications and letter of consent of the plan administrator and remuneration, provided that the provisions of section 90/6 paragraph two shall apply to the plan administrator *mutatis mutandis*;
- (8) the appointment and vacation of office of the plan administrator;
- (9) the time for the implementation of the plan, which shall not exceed five years;
- (10) refusal to accept the debtor's property or contractual rights in case of the debtor's property or contractual rights bearing unreasonably greater burdens than benefits to be derived therefrom.

Section 1117, section 1119, section 1145, section 1220 to section 1228, section 1238 to section 1243 of the Civil and Commercial Code, section 31, section 33, section 50, section 51, section 52, section 54, section 84, section 102, section 107, section 116, section 119, section 136, section 137, section 139, section 140, section 141, section 146 to section 148 of the Public Limited Companies Act, B.E. 2535 (1992) and section 39 of the Securities and Securities Exchange Act, B.E. 2535 (1992) shall not apply to the plan under this section.

Section 90/42 *bis*.²⁹ The classification of creditors under section 90/42(3)(b) shall be made as follows:

²⁹ Section 90/42 *bis* is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

(1) each secured creditor with the amount of the secured debt being not less than fifty percent of the total amount of debts of which repayment may be applied for in the business reorganisation shall be treated as one group;

(2) secured creditors not classified in any group under (1) shall be treated as one group;

(3) unsecured creditors may be classified into several groups, provided that unsecured creditors who have claims or benefits of an essentially identical or similar nature shall be in the same group;

(4) creditors under 130 *bis* shall be treated as one group.

Any creditor who considers that the classification of creditors is not in conformity with paragraph one may file an application with the Court within seven days as from the date of the knowledge of the classification and the Court may issue an order that classification be expeditiously conducted *de novo* in a correct manner. The order of the Court under this section shall be final.

Section 90/42 *ter*.³⁰ Rights of the creditors in the same group must receive equal treatment, unless the creditors disadvantageously treated in that group have given written consent.

Section 90/43. Within the period of three months as from the date of the publication of the order appointing the plan preparer in the Government Gazette, the plan preparer shall furnish the plan to the Receiver together with sufficient copies thereof in order for the same to be further furnished to creditors entitled to vote and the debtor.

The Court may grant an extension of the time limit under paragraph one on not more than two occasions and for a period not exceeding one month for each occasion.

Section 90/44. Upon receipt of the plan together with copies thereof from the plan preparer, the Receiver shall summon a meeting of creditors who are entitled to vote as soon as possible for discussion and passing a resolution on whether to accept the plan or revise it in any manner, provided that copies of the plan shall be furnished, and notice of the date, time, venue and agendas of the meeting shall be given, to the creditors who are entitled to vote, the debtor and the plan preparer, and the schedule of the said meeting shall also be published in at least one widely circulated daily newspaper not less than ten days in advance prior to the date of the meeting.

³⁰ Section 90/42 *ter* is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

In the case where the plan preparer is, for a special reason, unable to attend the meeting, a notice of postponement of the meeting shall be given to the Receiver prior to the date of the meeting, unless such prior notice is rendered impossible by reason of *force majeure*.

If the plan preparer does not attend the meeting, the Receiver shall address a question at the meeting of creditors as to whether the consideration of the plan is to be postponed. If the meeting passes a resolution postponing it, the Receiver may postpone the consideration of the plan as he deems appropriate, provided that the new date and time of the meeting shall be notified at the meeting, and the creditor, the debtor or the plan preparer not attending the meeting shall be deemed to have had the knowledge of the appointment.

Section 90/45. A creditor, the debtor or the plan preparer may request a revision of the plan by submitting an application to the Receiver not less than three days prior to the date of the meeting.

In the case where the application is made by a creditor or the debtor, a copy of the application for a revision of the plan must also be furnished, for information, to the plan preparer not less than three days prior to the date of the meeting.

The person making a request for a revision of the plan by changing the plan administrator must also furnish a letter of consent of the person nominated as the replacing plan preparer together with the application for the revision of the plan.

Section 90/46.³¹ The resolution approving the plan must be a special resolution of:

(1) a meeting of each and every group of creditors;

(2) a meeting of at least one group of creditors, not being the group of creditors under section 90/46 *bis*, provided that the aggregate amount of debts owed to the creditors approving the plan at the meeting of all groups of creditors must be not less than fifty percent of the amount of debts owed to the creditors attending the meeting of creditors in person or by proxy and voting on such resolution.

In the computation of the amount of debts, it shall be deemed that the creditors under section 90/46 *bis* have also attended the meeting and voted on the resolution approving the plan.

Section 90/46 *bis*.³² The following creditors shall be deemed to have approved the plan under section 90/46:

³¹ Section 90/46 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

³² Section 90/46 *bis* is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

(1) the creditor who has received from the plan preparer a proposal for having repayment of the defaulted debt in its full amount together with the interests and who will receive repayment of the defaulted debt in its full amount together with the interest within fifteen days as from the date of the Court's order approving the plan, provided that such creditor continues to be entitled to receive repayment of the debt under the original contract or agreement and that the debtor shall be deemed to be in the position as if the debtor had never been in default;

(2) the creditor who has received from the plan preparer a proposal for having repayment of the debt under the original contract or agreement;

(3) the creditor under section 130 *bis*.

Section 90/47. At the meeting of creditors for considering the plan, if the meeting is unable to complete the consideration of transactions within the date of the meeting, the Receiver shall postpone the meeting to the next working day and the provisions on the notification of the new appointed meeting under section 90/44 paragraph three shall apply *mutatis mutandis*.

Section 90/48.³³ At the meeting of creditors for considering the plan, if a request is made for any revision of the plan, the meeting of creditors shall first pass a resolution on whether to allow the revision at such request and related matters. If the meeting of creditors passes a resolution allowing the revision and the plan preparer attends the meeting, the Receiver shall ask the plan preparer whether the plan preparer allows the plan to be revised in accordance with the resolution. When the plan preparer allows the plan to be revised, the meeting of creditors shall then pass a resolution under section 90/46 on whether to approve the revised plan.

In the case where the meeting of creditors passes a resolution allowing the revision of the plan but the plan preparer does not attend the meeting, the Receiver shall postpone the meeting in order to ask the plan preparer whether the plan preparer allows the plan to be revised in accordance with such resolution and shall then proceed in accordance with the provisions of paragraph one, and the provisions on the notification of the new appointed meeting under section 90/44 paragraph three shall apply *mutatis mutandis*.

In the case where no request is made for a revision of the plan or the plan preparer allows the plan to be revised, if the meeting of creditors does not pass a resolution under section 90/46 approving the said plan or fails to pass any resolution or is attended by no creditors, the Receiver shall report it to the Court without delay.

³³ Section 90/48 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Upon receipt of the report, the Court shall fix the hearing date as a matter of urgency and notify the Receiver of the appointed date and time. The Receiver shall give a notice thereof to the debtor and all creditors for information not less than three days in advance. At the hearing, the Court shall consider evidence in the brief and hear explanations of the Receiver and creditors as well as the debtor's objection. If the Court finds the fact under paragraph three, the Court shall issue an order cancelling the business reorganisation order. But, if a bankruptcy action has been instituted against the debtor and the Court deems it appropriate to adjudge the debtor bankrupt, the Court shall dismiss the petition for the business reorganisation and resume proceedings of the bankruptcy action which has been stayed.

Section 90/49. In the case where a request is made for a material revision of the plan, the Receiver may order the postponement of the consideration of the plan as he deems appropriate when a request for postponement is made by the plan preparer, the debtor or one or more creditors to whom the debts are owed in the aggregate amount of not less than one-tenth of the total amount of debts owed to the creditors attending the meeting, and the provisions on the notification of the new appointed meeting under section 90/44 paragraph three shall apply *mutatis mutandis*.

Section 90/50. At the meeting of creditors which is held on account of the postponement in consequence of the plan preparer's failure to attend the meeting under section 90/44 or section 90/48 paragraph two, if the plan preparer does not attend the meeting again or attends the meeting but fails to satisfy the Receiver that there occurred a special reason or *force majeure* preventing his attendance at the previous meeting or preventing his prior notification before the date of the previous meeting, as the case may be, then the Receiver shall make a proposal at the meeting for considering whether a new plan preparer should be appointed. In the case where the meeting of creditors passes a resolution for appointing a new plan preparer, the provisions of section 90/51 on the election of a new plan preparer shall apply *mutatis mutandis*.

In the case where a resolution is passed at the meeting of creditors for not appointing a new plan preparer, the meeting of creditors shall, regardless of whether a request is made for a revision of the plan, consider it and passes a resolution in accordance with section 90/46 on whether to approve the plan or the revised plan if the plan preparer does not attend the meeting again. If the plan preparer attends the meeting, the Receiver shall proceed with the meeting of creditors, and the provisions of section 90/48 shall apply *mutatis mutandis*.³⁴

³⁴ Section 90/50 paragraph two is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 90/51. In the case where the plan preparer has not allowed the plan to be revised in whole or in part in accordance with the resolution of the meeting of creditors, the Receiver shall, if the meeting of creditors has not passed a resolution under section 90/46 approving the plan prepared by the plan preparer, ask the meeting of creditors whether to appoint a new plan preparer. If the meeting of creditors passes a resolution for an appointment of a new plan preparer, the meeting of creditors shall elect a new plan preparer on such date.³⁵

Any creditor attending the meeting or the debtor has the right to nominate a person as a new plan preparer, provided that a letter of consent of the person so nominated shall also be produced.

If no nomination of a person to be a plan preparer under paragraph two is made by anyone, the Receiver shall postpone the meeting for electing a new plan preparer within the period of not less than three days and not more than seven days, and the provisions on the notification of the new appointed meeting under section 90/44 paragraph three shall apply *mutatis mutandis*.

Section 90/52. If the meeting of creditors successfully passes a resolution appointing a new plan preparer, the Court shall appoint such person as a new plan preparer, and the provisions of section 90/17 paragraph two and paragraph six shall apply *mutatis mutandis*.

If the meeting of creditors passes a resolution not appointing a new plan preparer or the meeting of creditors fails to pass a resolution on the election of a new plan preparer or the Court has a reasonable reason for not appointing a new plan preparer in accordance with the resolution of the meeting of creditors under paragraph one, the Receiver shall report it and apply to the Court for issuing an absolute receivership order against the debtor expeditiously. In such case, the provisions of section 90/48 paragraph four shall apply *mutatis mutandis*.

Section 90/53. Upon appointment by the Court of a new plan preparer, the powers and duties of the new plan preparer and the original plan preparer commence and terminate on the date of such order of the Court and the Court shall notify such order to the Receiver, the original plan preparer and the new plan preparer without delay.

Upon knowledge of the Court's order, the original plan preparer shall furnish the property, seals, account books and accounts in connection with the debtor's property and business to the new plan preparer as soon as possible.

The Receiver shall publish such order in the Government Gazette and in at least one widely circulated daily newspaper and expeditiously notify such order to all creditors entitled

³⁵ Section 90/51 paragraph one is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

to vote and the Registrar of Partnerships and Companies or the Registrar of juristic persons concerned for recordation by the Registrar of the Court's order in the Register and shall also notify it to persons having powers and duties in connection with the juristic person that is the debtor, for information.

Section 90/54.³⁶ Within the period of forty five days as from the date of the knowledge of the Court's order, the new plan preparer shall furnish the plan to the Receiver for summoning a meeting of creditors in accordance with section 90/44 paragraph one.

The Court may grant an extension of the time limit under paragraph one on not more than two occasion and for a period not exceeding fifteen days for each occasion.

At a meeting of creditors for considering the said plan, the plan shall be, in the event of no request for revision thereof, submitted to the meeting of creditors for passing a resolution, in accordance with section 90/46, on whether to approve it.

In case of a request for revision of the plan, the meeting of creditors shall first pass a resolution on whether to approve the requested revision and on related matters. If no resolution is passed for the plan to be revised, a resolution shall be passed, in accordance with section 90/46, on whether to approve the plan as submitted under paragraph one.

If a resolution is passed for the plan to be revised but the plan preparer does not attend the meeting, a resolution shall be passed in accordance with section 90/46 on whether to approve the revised plan. If no resolution is passed in accordance with section 90/46 approving the said plan, a resolution shall be passed, in accordance with section 90/46, on whether to approve the plan as submitted under paragraph one.

If a resolution is passed for the plan to be revised and the plan preparer attends the meeting, the Receiver shall first ask whether the plan preparer agrees therewith. If the plan preparer allows the plan to be revised in accordance with such resolution, the meeting of creditors shall then pass a resolution in accordance with section 90/46 on whether to approve the plan as revised in accordance with the resolution of the meeting of creditors. In the case where the plan preparer does not allow the plan to be revised in whole or in part in accordance with the resolution of the meeting of creditors, the meeting of creditors shall pass a resolution in accordance with section 90/46 on whether to approve the plan as revised in accordance with the resolution of the meeting of creditors. If no resolution is passed in accordance with section 90/46 approving the said plan, a resolution shall be passed, in accordance with section 90/46, on whether to approve the plan as allowed by the plan preparer to be partially revised or the plan as submitted under paragraph one.

³⁶ Section 90/54 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

If the meeting of creditors does not pass a resolution in accordance with section 90/46 approving the plan prepared by the new plan preparer or the plan as revised or fails to pass any resolution or is attended by no creditors, the Receiver shall report it to the Court without delay, and the provisions of section 90/48 paragraph four shall apply *mutatis mutandis*.

The provisions of section 90/45 paragraph three, section 90/47 and section 90/49 shall apply to the consideration of the plan resubmitted *mutatis mutandis*.

Section 90/55. If the meeting of creditors passes a resolution in accordance with section 90/46 approving the plan, the meeting of creditors may pass a resolution appointing a committee of creditors for representing all creditors in overseeing the implementation of the plan.³⁷

The committee of creditors shall consist of not less than three and not more than seven members to be elected from creditors or creditors' proxies. Each creditor may not have more than one proxy on the committee of creditors.

Part 8

Consideration and Approval of the Business Reorganisation Plan

Section 90/56. The Receiver shall expeditiously report the resolution of the meeting of creditors approving the plan to the Court in order for the Court to order whether to give approval thereto. In such case, the Court shall fix the date of hearing the plan as a matter of urgency, and the Receiver shall have such time as to be able to give a notice thereof to the plan preparer and all creditors not less than three days in advance.

Section 90/57. In considering the plan, the Court shall consider the explanations of the Receiver and of the preparer, including the objection raised by the debtor or the creditors entitled to vote under section 90/30 who did not cast a vote approving the plan.

Section 90/58.³⁸ The Court shall issue an order approving the plan when the Court considers that:

- (1) the plan contains complete particulars under section 90/42;
- (2) proposals for payment of debts are not contrary to section 90/42 *ter* and in the case where the resolution approving the plan is the resolution under section 90/46 (2), the proposals for payment of debts under the plan must be in accordance with the order prescribed

³⁷ Section 90/55 paragraph one is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

³⁸ Section 90/58 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

by the law in connection with the distribution of property in a bankruptcy case, unless such creditors have given consent;

(3) the successful implementation of the plan will result in creditors receiving payment in the amount of not less than that received in the case where the Court adjudges the debtor bankrupt.

In the case where the plan fails to contain complete particulars under section 90/42, the Court shall inquire the plan preparer. If the Court considers that the missing items is not material in the debtor's business reorganisation, it shall be deemed that the plan contains complete particulars under section 90/42.

If the Court issues an order disapproving the plan, the Court shall arrange for a hearing to be held for considering whether the debtor should be adjudged bankrupt. In such case, the provisions of section 90/48 paragraph four shall apply *mutatis mutandis*.

Section 90/59. Subject to section 90/42 and section 90/64, the Court shall, upon its order approving the plan, notify such order to the plan administrator and the plan preparer without delay. All rights and duties of the plan preparer shall thence vest in the plan administrator as from the time at which the plan administrator has the knowledge of the Court's order.

The provisions of section 90/20 paragraph four and section 90/21 paragraph three shall apply *mutatis mutandis*.

In the case where the debtor is the debtor under section 90/4 (3), (4), (5) or (6), the Court shall also notify the order to the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4 (6), as the case may be, and the persons having the powers and duties concerned shall not issue any order which is contrary to or inconsistent with the plan approved by the Court, unless upon permission from the Court accepting the petition.

Part 9

Proceedings Subsequent to the Court's Approval of the Business Reorganisation Plan

Section 90/60. The plan approved by the Court binds the creditors who may make applications for repayment of debt in the business reorganisation and the creditors who are entitled to repayment of debt in the business reorganisation, in accordance with section 90/27.

The Court's order approving the plan does not have any effect of varying liabilities of persons who are the debtor's partners or bear joint liability together with the debtor or stand

surety for or are in the same position as the surety for the debtor, in respect of the debts existing before the date of the Court's order approving the plan and does not have any effect of rendering such persons to be liable for the debts created under the plan as from the said date unless such persons, with evidence in writing, give consent thereto.

Section 90/61. Any creditor who may apply for repayment of debt in the business reorganisation but fails to submit an application for repayment of debt within the time specified under section 90/26 or section 90/27 paragraph three, as the case may be, shall lose the right to receive repayment of the debt, regardless of whether the debtor's business reorganisation will become successful as intended by the plan or not, unless:

- (1) it is otherwise specified in the plan; or
- (2) the Court issues an order cancelling the business reorganisation order.

Section 90/62. A creditor is entitled to receive repayment of the following debts arising in consequence of the debtor's business reorganisation under the plan, without having to submit an application for repayment of debt in the business reorganisation,

- (1) the debts created by the plan preparer, the plan administrator, the interim plan administrator, the Receiver or such person's agents;
- (2) debts payable on taxes and duties; and
- (3) other debts payment of which is required by specific law, such as a contribution to a compensation fund.

Section 90/63. Upon the Court's order approving the plan, if there arises a necessity for a revision of the plan in facilitation of the completion thereof, the plan administrator may propose a revision of the plan. In such case, the provisions of section 90/20 paragraph four, section 90/44, section 90/45 paragraph one and paragraph two, section 90/46, section 90/47, section 90/56, section 90/57, section 90/58 paragraph one and paragraph two, section 90/59 paragraph one and section 90/60 shall apply *mutatis mutandis*, provided that any creditor or the debtor shall not request for a revision of the proposal for a revision of such plan, unless the plan administrator gives consent thereto.

The revision of the plan by extending the period for the implementation of the plan may be made on not more than two occasions for a period not exceeding one year for each occasion, unless it is apparent that the implementation of the plan is almost completed, in which case the plan administrator may apply for such additional extension of time as is appropriate in a particular case.

If the meeting of creditors does not pass a resolution, under section 90/46, approving a proposal for the revision of the plan under paragraph one or the Court issues an order disapproving such proposal for the revision of the plan, the plan administrator shall continue to manage the debtor's business in accordance with the original plan.³⁹

Section 90/64. The plan administrator may apply to the Court for an order approving the preparation of the debtor's new Articles of Association or the revision or alteration of the Articles of Association or statements in the debtor's Memorandum of Association in accordance with the direction stipulated in the plan or the revised plan.

Upon the Court's order granting approval under paragraph one, the provisions of section 90/20 paragraph four shall apply *mutatis mutandis*.

Section 90/65. The plan administrator vacates office upon any of the following circumstances:

- (1) death;
- (2) dissolution of the juristic person that is the plan administrator;
- (3) the Court granting permission for resignation;
- (4) being placed under a receivership order by the Court or being adjudged by the Court as an incompetent or a quasi-incompetent person;
- (5) being imprisoned by a final judgment to a term of imprisonment except for an offence committed through negligence or a petty offence;
- (6) satisfaction of the condition stipulated in the plan;
- (7) expiration of the period set for the implementation of the plan or successful completion of the implementation of the plan;
- (8) the Court's order removing the plan administrator from office.

Section 90/66. The plan administrator shall prepare a report on the implementation of the plan for submission to the Receiver every period of three months as determined by the Receiver.

Section 90/67. In the case where the plan administrator fails to take action in the implementation of the plan or performs duties dishonestly or causes damage to creditors or the debtor or fails to meet any qualifications required of the plan administrator as prescribed in the Ministerial Regulation or there arises any other cause making it inappropriate for the plan administrator to remain in such office, the Court may, upon a report by the Receiver or an

³⁹ Section 90/63 paragraph three is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

application by motion filed by the committee of creditors or the debtor's executive, issue an order that the plan administrator vacate office or issue any other order as the Court deems appropriate.

Section 90/68. When the plan administrator vacates office and there remain activities to be carried out in the implementation of the plan, the Receiver shall summon a meeting of creditors for passing a resolution, under section 90/46, electing a new plan administrator as soon as possible.⁴⁰

When the meeting of creditors has been held on two occasions but the meeting of creditors is unable to pass the resolution under section 90/46 for the election of a new plan administrator, the Receiver shall report it to the Court. In such case, the Court shall fix the date of hearing the Receiver's report as a matter of urgency, and the Receiver shall have such time as to be able to give a prior notice thereof to the debtor and all creditors not less than three days in advance.⁴¹

When the Court has considered evidence in the brief and heard explanations of the Receiver, creditors and the debtor, the Court shall issue an order appointing any person or the Receiver as the plan administrator or issue any order as the Court deems appropriate. If the Court deems it appropriate to adjudge the debtor bankrupt, the Court shall issue an absolute receivership order against the debtor, but if the Court does not deem it appropriate to adjudge the debtor bankrupt, the Court shall issue an order cancelling business reorganisation order.

The provisions of section 90/21 paragraph three, section 90/44 paragraph one, section 90/51 paragraph two and paragraph three, section 90/52 paragraph one and section 90/53 paragraph one and paragraph three shall apply *mutatis mutandis*.

Section 90/69. In the case where there arises any cause preventing the plan administrator from performing duties *pro tempore* or during the period in which the plan administrator vacates office and the Court has not yet issued an order appointing a new plan administrator, the Court shall issue an order appointing any one or more persons as the interim plan administrator or interim plan administrators until such cause ceases to exist. While an order appointing an interim plan administrator is unable to be issued, the Receiver shall be an interim plan administrator.

In the case where the Court issues an order appointing an interim plan administrator, the provisions of section 90/20 paragraph four shall apply *mutatis mutandis*.

⁴⁰ Section 90/68 paragraph one is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁴¹ Section 90/68 paragraph two is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 90/70. If the debtor's executive, the plan administrator, the interim plan administrator or the Receiver, as the case may be, considers that the business reorganisation has been successfully completed in accordance with the plan, such person shall report it to the Court and request the Court to issue an order cancelling the business reorganisation without delay, and the Court shall then fix the date of the hearing. If it finds that the business reorganisation has been successfully completed in accordance with the plan, the Court shall issue an order cancelling the business reorganisation without delay. But, if finds that the business reorganisation has not yet been successfully completed in accordance with the plan, the Court shall, in the case where the period of time set for the implementation of the plan remains unexpired, the Court shall issue an order that the business reorganisation be continued towards completion within the period of time under the plan. If at that time the period of time set for the implementation of the plan has expired but it is apparent that the plan has been implemented to the stage near its completion, the Court may grant an extension of the period of time for the implementation of the plan as is reasonable in a particular case, or the Court shall proceed in accordance with paragraph two.

When the period of time for the implementation of the plan has expired but the business reorganisation has not yet been successfully completed in accordance with the plan, the plan administrator, the interim plan administrator or the Receiver, as the case may be, report it to the Court within fourteen days as from the expiry date of the period of time set for the implementation of the plan. In such case, the Court shall fix the date of hearing as a matter of urgency and notify the Receiver of the appointed date and time. The Receiver shall give a notice thereof to the debtor and all creditors not less than three days in advance. In its consideration, the Court shall consider evidence in the brief and hear explanations of the Receiver and creditors as well as objections of the debtor. If the Court deems it appropriate to adjudge the debtor bankrupt, the Court shall issue an absolute receivership order against the debtor, but if the Court does not deem it appropriate to adjudge the debtor bankrupt, the Court shall issue an order cancelling the business reorganisation.

As from the expiration of the period of time for the implementation of the plan until the issuance by the Court of an absolute receivership order against the debtor or an order cancelling the business reorganisation under paragraph two, the plan administrator, the interim plan administrator or the Receiver, as the case may be, continues to have the power and duty to manage the debtor's business and property to the extent necessary.

Section 90/71. When the Court has issued an order cancelling the business reorganisation but the debtor's executive has not yet resumed the management the debtor's business and property, the plan administrator, the interim plan administrator or the Receiver, as

the case may be, has the power to carry out the management for protecting the debtor's interests as is reasonable in the circumstances until the debtor's executive resumes the management of the debtor's business and property.

If the office of the debtor's executive becomes vacant on the date of the Court's order cancelling the business reorganisation and such vacancy prevents further operation of the business, the Receiver shall summon a meeting of the debtor's shareholders or take action in accordance with the law for the purpose of the appointment of the debtor's executive as soon as possible.

In the case where a meeting must be held for taking action under paragraph two, the Receiver shall preside over such meeting and it shall be deemed that it is a meeting under the law on such particular matter.

Part 10

Dismissal of the Petition for Business Reorganisation, Cancellation of the Business Reorganisation Order and Cancellation of Business Reorganisation

Section 90/72. In the case where the Court issues an order dismissing the petition, the Court shall publish such order in at least one widely circulated daily newspaper and shall notify the order to the Registrar of Partnerships and Companies or the Registrar of juristic persons concerned for recordation by the Registrar of the Court's order in the Register, and also to the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, for information.

Section 90/73. In the case where the Court issues an order cancelling the business reorganisation order or issues an order cancelling the business reorganisation, the Court shall notify such order to the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, and to the debtor's executive without delay.

Upon the knowledge of the Court's order under paragraph one, the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, must deliver the property, seals, account books and documents related to the debtor's property and business to the debtor's executive as soon as possible.

The Receiver shall publish the order cancelling the business reorganisation order or the order cancelling the business reorganisation, as the case may be, in the Government Gazette and in at least two widely circulated daily newspapers and notify the order to the Registrar of Partnerships and Companies or the Registrar of juristic persons concerned for

recordation by the Registrar of the Court's order in the Register, and also to the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the State agency under section 90/4(6), as the case may be, for information.

Section 90/74. In the case where the Court issues an order cancelling the business reorganisation order, the powers and duties to handle the management of the debtor's business and property shall be restored to the debtor's executive, and the debtor's shareholders shall be restored to their rights under the law.

Section 90/75. The order cancelling the business reorganisation has the effect of discharging the debtor from all debts for which applications may be made for repayment of debt in the business reorganisation, except for any debt of which repayment has been applied for by the creditor who may make an application for repayment of debt in the business reorganisation, and shall have the following consequences:

(1) the debtor's executive is restored to the power to handle the management of the debtor's business and property;

(2) the debtor's shareholders are restored to their rights under the law;

(3) the remuneration of the interim executive, the plan preparer, the plan administrator or the interim plan administrator and the debts created by the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator for the benefit of the debtor's business reorganisation, with the exception of the debt arising from a wrongful act, carry a preferential right over all the property of the debtor and shall be treated as falling in the same priority as Priority 1 under section 253 of the Civil and Commercial Code.

Section 90/76. The Court's order dismissing the petition, cancelling the business reorganisation order and cancelling the business reorganisation is not prejudicial to any act done by the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator prior to the issuance by the Court of such order.

Part 11

Application for Repayment of Debt upon the Court's Absolute Receivership Order against the Debtor

Section 90/77. In the case where the Court issues an absolute receivership order against the debtor under section 90/48, section 90/50, section 90/52, section 90/54, section 90/58, section 90/68 and section 90/70, it shall be deemed that the date of the Court's order accepting

the petition for consideration is the date on which an application is made for adjudging the debtor bankrupt, and creditors entitled to receive repayment of debt in the business reorganisation, including creditors of other debts for which applications may be made for repayment of debt from the obligations arising as from the time of the Court's business reorganisation order, shall submit an application for repayment of debt to the Receiver within the time under section 91, and then further action shall be taken in accordance with section 104 to section 108.

The debt payable as remuneration to the interim executive, the plan preparer, the plan administrator and the interim plan administrator and the debt created by the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator for the benefit of the debtor's business reorganisation, including the debt duly created by the debtor under section 90/12 (9) shall not be subject to the provision of section 94 (2).

The debts created by the Receiver, the plan preparer, the plan administrator or the interim plan administrator in accordance with the plan for the benefit of the debtor's business reorganisation shall be afforded the same priority as that afforded to expenses incurred by the Receiver in the management of the debtor's property under section 130 (2).

If the creditor under paragraph one has made payment of the fee for the application for repayment of any particular debt in the business reorganisation, the creditor is not required to make payment of the fee for the application for repayment of debt in a bankruptcy action again.

The first meeting of creditors shall appoint any one or more creditors to act as the plaintiff creditor or plaintiff creditors.

Section 90/78. The absolute receivership order issued by the Court against the debtor under the provisions of section 90/48, section 90/50, section 90/52, section 90/54, section 90/58, section 90/68 and section 90/70 is not prejudicial to any act done in good faith and in the implementation of the plan prior to such order of the Court and has the effect of restoring the debts in respect of which the creditors are entitled to receive repayment in the business reorganisation to their original positions, unless the nature of the debt at that time does not permit it.

Part 12
Appeals⁴²

Section 90/79. (Repealed)

Part 13
Penalties Applicable to Proceedings Relating to
the Debtor's Business Reorganisaton

Section 90/80. Any person who submits a petition under section 90/3 or a form declaring an intention to attend a meeting for electing the plan preparer under section 90/22 or an application for repayment of debt in the business reorganisation under section 90/26 or a written request to the plan preparer for issuing a certificate in recognition of his right under section 90/27 paragraph three which contains material falsity likely to cause damage to the debtor, creditors, other persons or the public shall be liable for a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/81. Any person who gives a statement or furnishes an account book, document or physical evidence which is materially false in connection with the debtor's business and property or the debtor's business reorganisation to the Receiver, the plan preparer, the plan administrator or the interim plan administrator shall be liable for a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/82. Any person who contravenes the provisions of section 90/12 (9) shall be liable for a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/83. Any person who contravenes the Receiver's order issued in accordance with the provisions of section 90/20 paragraph two or contravenes the provisions of section 90/19, section 90/21 paragraph three, section 90/24 paragraph two, section 90/34, section 90/36, section 90/53 paragraph two, section 90/59 paragraph two, section 90/68 paragraph four, section 90/70 paragraph two or section 90/73 paragraph two without any reasonable cause shall

⁴² **Part 12 Appeals**, section 90/79 is repealed by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).

be liable for a fine not exceeding one hundred thousand Baht or to imprisonment for a term not exceeding one year or to both.

Section 90/84. Any debtor's executive who commits any of the following acts:

(1) failing to give explanations on material information in connection with the debtor's business or property to the Court, the Receiver, the plan preparer, the plan administrator or a meeting of creditors, with the exception of the case where it is proved that the act is committed with no fraudulent intent;

(2) failing to notify the Receiver within fifteen days upon having the knowledge that an allegation of false indebtedness is made for electing a plan preparer or applying for repayment of debt in accordance with the plan;

(3) failing to notify the Receiver within fifteen days upon having the knowledge that false indebtedness has been invoked in applying for repayment of debt under section 90/27 paragraph three or section 90/62;

(4) submitting a list of all existing property and liabilities and the names as well as addresses of all creditors of the debtor under section 90/6 paragraph four or section 90/9 paragraph two or submitting explanations on the debtor's business and property under section 90/35 with material falsity likely to cause damage to creditors,

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

Section 90/85. Any person who gives, offers to give or agrees to give property or any other benefit to a creditor or any other person with the intent to gain support or approval from creditors in the election of the plan preparer or the plan administrator or the approval or revision of the plan shall be liable for a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/86. Any person who demands, accepts or agrees to accept property or any other benefit for himself or for any other person in order that he or any other creditor will lend support or make no objection in the election of the plan preparer or the plan administrator or the approval or revision of the plan shall be liable to a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/87. Any person who, knowing the business or any information of the debtor who is under business reorganisation in consequence of the discharge of powers and duties prescribed in this Chapter 3/1 when in the normal circumstances of the debtor who is under business reorganisation such business or information is not to be disclosed, makes

disclosure thereof in any manner other than in the course of the discharge of duties or other than for the purpose of business reorganisation under Chapter 3/1, shall be liable for a fine not exceeding three hundred thousand Baht or to imprisonment for a term not exceeding three years or to both.

Section 90/88. Any person, holding office as an interim executive, the plan preparer, the plan administrator or the interim plan administrator, performs or omits to perform the duty dishonestly or contravenes or fails to comply with the provisions of Chapter 3/1 with the intent to cause loss to the debtor or creditors shall be liable for a fine not exceeding five hundred thousand Baht or to imprisonment for a term not exceeding five years or to both.

Section 90/89. In the case where the offender committing an offence in Chapter 3/1 is a juristic person, if the commission of the offence by such juristic person is attributable to the giving of directions or omission from giving directions or an act or omission from carrying out an act required of a director, manager or any person responsible for the operation of such juristic person, then such person shall also be liable to the penalty provided for such offence.

Section 90/90. The debtor and a creditor shall also be the injured persons for offences in accordance with the provisions of Chapter 3/1.

CHAPTER IV

METHODS FOR MANAGEMENT OF THE DEBTOR'S PROPERTY

Part 1

Application for Repayment of Debt

Section 91. A creditor intending to have repayment of debt in a bankruptcy action, whether the plaintiff creditor or not, must submit an application therefor to the Receiver within two months as from the date of the publication of the absolute receivership order. But, if the creditor is outside the Kingdom, the Receiver may grant an extension of time for a period not exceeding two months.

The application for repayment of debt must be in the form and accompanied by a list indicating details of debts and a statement indicating evidence pertinent to the debts and any property of the debtor which is held as security or is in the possession of the creditor.

Section 92. Any person injured in consequence of seizure of his property under section 109 (3) or in consequence of the cancellation of a transfer of property or any act under section 115 or in consequence of the Receiver's refusal to accept property or contractual rights under section 122 has the right to apply for repayment of debt in respect of the price of the property or the original debt or damages, as the case may be, within the time under section 91, provided that such time shall be computed as from the date on which the right to receive repayment of debt becomes exercisable or, in the event of a dispute in the litigation *ex casu*, as from the date on which the case become final.

Section 93. In the case where the Receiver appears in the pending action on behalf of the debtor, if the Receiver loses the action, the judgment creditor has the right to apply for repayment of debt within the time under section 91, provided that such time shall be computed as from the date on which the action becomes final.

Section 94. An unsecured creditor may apply for repayment of debt if the cause thereof arose prior to the date of the Court's receivership order, even though such debt does not yet become due or is subject to a condition, except:

- (1) the debt arising in contravention of any prohibition under the law or good morals or the debt unenforceable by action;
- (2)⁴³ the debt created with the consent of the creditor when the creditor has known of the debtor's insolvency, excluding the debt created with the consent of the creditor in the interest of further operation of the debtor's business.

Section 95. A secured creditor has the right over the property given as security by the debtor prior to the receivership without any need to apply for repayment of debt but must allow such property to be examined by the Receiver.

Section 96. A secured creditor may apply for repayment of debt on the following conditions:

- (1) when he agrees to relinquish the property given as security for the benefit of all creditors, he may apply for repayment of debt in full;
- (2) when enforcement has been made against the property given as security, he may apply for repayment of debt in respect of the outstanding amount;
- (3) when a request has been made to the Receiver for auction sale of the property given as security, he may apply for repayment of debt in respect of the outstanding amount;

⁴³ Section 94 (2) is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

(4) when valuation of the property given as security has been made, he may apply for repayment of debt in respect of the outstanding amount. In such case, the Receiver has the power to redeem the property at such price. If such price is considered inappropriate, the Receiver has the power to sell the property by any method agreed by the Receiver and the creditor. In the absence of such agreement, the property may be sold by auction without causing loss to such creditor, and the creditor or the Receiver has the power to bid in the auction sale. The proceeds of the sale shall be deemed to be the valuation price indicated by the creditor in the application.

If the Receiver fails to notify the creditor in writing that he will exercise the right to redeem or agree to sell the property given as security within four months as from the date of submission by the creditor of the application for repayment of debt, it shall be deemed that the Receiver gives consent to the effect that the property shall become the property of the creditor at the valuation price indicated by the creditor and the Receiver loses the right to redeem or sell such property.

The provisions of this section shall not apply to the case where under the law the debtor is not liable in excess of the price of the property given as security.

Section 97. If a secured creditor applies for repayment of debt without declaring his status as a secured creditor, such creditor must return the property given as security to the Receiver and the right over such property shall terminate unless the creditor satisfies the Court that such omission has occurred by mistake, in which case the Court may grant permission for correction of the statement made in particulars of the application for repayment of debt and direct a return of a share in the property or issue any other direction as the Court deems appropriate.

Section 98. If the debt of which repayment is applied for is fixed in a foreign currency, there shall be a conversion of the amount into a Thai currency by reference to the exchange rate on the date of the Court's receivership order.

Section 99. If the debt is one for rent or is any other debt with a fixed period of repayment and the date of the Court's receivership order does not correspond to the date of maturity thereof, the creditor may apply for repayment of debt *pro rata* up to the date of the Court's receivership order.

Section 100. Any interest or any other cost in lieu of interest subsequent to the date of the Court's receivership order shall not be deemed as the debt of which repayment may be applied for.

Section 101. If some of joint debtors are under receivership, other joint debtors may submit an application for repayment of debt in respect of the amount for which they may exercise the right of recourse at a future date unless the creditor has exercised the right to apply for repayment of debt in its full amount.

The provisions of the foregoing paragraph apply to sureties, joint sureties or persons in similar positions *mutatis mutandis*.

Section 102. If the creditor entitled to apply for repayment of debt is a debtor at the time of the receivership order, a set-off is permissible although the debts of both parties do not have the same subject-matter or are subject to conditions or time clauses, unless the creditor has acquired the claim against the debtor after the receivership order.

Section 103. When a person entitled to apply for repayment of debt which is subject to a condition precedent requests for a set-off, such person must give security in respect of the amount to which the set-off request relates.

Section 104. At the expiration of two months as from the date of publication of the absolute receivership order, the Receiver shall expeditiously arrange for a meeting of the debtor and all creditors for examining applications for repayment of debt, provided that a notice thereof shall be given not less than seven days in advance.

Section 105. In examining applications for repayment of debt, whether judgment debts or not, the Receiver shall have the power to issue a warrant summoning creditors, the debtor or any person to appear for inquiries as to the debts and then prepare opinions and furnish to the Court the brief relating to the debts for which applications are made for repayment, together with a report as to whether applications for repayment of debt have been challenged or not.

Section 106. If any application for repayment of debt is not challenged by the debtor, any creditor or the Receiver, the Court has the power to issue an order approving such application unless there is a reasonable cause for ordering otherwise.

Section 107. If any application for repayment of debt is challenged, the Court shall consider it and issue any of the following order:

- (1) dismissing the application for repayment of the debt;
- (2) approving full repayment of the debt;
- (3) approving partial repayment of debt.

Section 108. When the Court has issued an order approving the creditor's application for repayment of debt, if it appears thereafter that the Court erred in issuing such order, the Court has the power to, upon the Receiver's application by motion, dismiss the application for repayment of debt or reduce the amount previously approved.

Part 2

Property for Repayment of Debt

Section 109.⁴⁴ The following property shall be deemed the property, in a bankruptcy action, distributable amongst creditors:

(1)⁴⁵ all the property which the debtor has at the time of commencement of the bankruptcy, including claims exercisable over other persons' property, except:

a. property for personal use and necessary for living, consumption of which is needed by the debtor as well as his spouse and minor children in accordance with reasonable conditions in life; and

b. livestock, plants, tools and things used for the carrying out of the occupation of the debtor, with the aggregate value not exceeding one hundred thousand Baht;

(2) the property acquired by the debtor after the time of commencement of the bankruptcy up to the discharge from bankruptcy;

(3) things in the possession or falling under the power of the debtor to give directions or order disposal thereof in the course of the debtor's trade or business with the consent of the true owners in the circumstances engendering an inference that the debtor is an owner at the time of the bankruptcy petition against such debtor.

Part 3

Effects of Bankruptcy on Transactions Previously Undertaken

Section 110. The Court's order for a seizure or attachment of the debtor's property *pro tempore* or a writ of execution against the debtor's property may not be set up against the Receiver unless the execution has been completed prior to the date of the Court's receivership order.

⁴⁴ Section 109 is amended by the Bankruptcy Act, (No. 2), B.E. 2511 (1968).

⁴⁵ Section 109 (1) is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

The execution is deemed to have been completed at the expiration of the period of time within which other creditors are permitted to file an application for participation in the property under the Civil Procedure Code.

The provisions of this section are not prejudicial to a secured creditor's right to have execution against the property given as security or to payment of money made in good faith by any person to the Court or the executing officer by an order of the Court or to validity of purchases made in good faith in an auction sale of property by an order of the Court.

Section 111.⁴⁶ When the executing officer has disposed of the property but has not yet made payment, the executing officer shall, upon receipt of the notification that a bankruptcy petition has been filed against the debtor before the completion of the execution, hold the proceeds and, if thereafter the Court issues an absolute receivership order, deduct therefrom expenses of the executing officer and fees incurred by the plaintiff in the execution. The remaining amount shall be remitted as the property in a bankruptcy action. In such case, the executing officer shall not collect fees of the executing officer under the Civil Procedure Code.

Section 112.⁴⁷ If, while the execution has not yet been completed, the executing officer receives the notification that the debtor is placed under receivership, the executing officer shall notify particulars of the debtor's property under the executing officer's authority or possession to the Receiver and shall comply with the Receiver's requests in connection with such property. Expenses incurred by the executing officer and fees payable by the plaintiff in the execution shall first be deducted from such property. In such case, the executing officer shall not collect fees of the executing officer under the Civil Procedure Code.

Section 113. The Receiver may apply, by motion, to the Court for cancellation of fraudulent acts in accordance with the Civil and Commercial Code.

Section 114.⁴⁸ If the juristic act intended to be cancelled on the ground of fraud under section 113 arose during the period of one year before the bankruptcy petition and thereafter or constitutes a gratuitous act or constitutes an act under which the debtor has received unreasonably small remuneration, it shall *prima facie* be presumed to be an act whereby the debtor and the person enriched thereby knew that it would be prejudicial to the creditor.

⁴⁶ Section 111 is amended by the Bankruptcy Act, (No. 2), B.E. 2511 (1968).

⁴⁷ Section 112 is amended by the Bankruptcy Act, (No. 2), B.E. 2511 (1968).

⁴⁸ Section 114 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 115. In the event of a transfer of property or any act done by the debtor or done with the debtor's consent during the period of three months before the bankruptcy petition and thereafter with the intent to enable any creditor to have an advantage over other creditors, the Court has the power to, upon the Receiver's application by motion, order a cancellation of such transfer or such act.

If the creditor who has become advantaged is the debtor's insider, the Court has the power to order a cancellation of such transfer or such act under paragraph one as done during the period of one year before the bankruptcy petition and thereafter.⁴⁹

Section 116.⁵⁰ The provisions of section 115 is not prejudicial to rights of third persons acquired in good faith and for value before the bankruptcy petition.

Part 4 Collection and Distribution of Property

Section 117.⁵¹ Upon the Court's issuance of a receivership order against the debtor, the Court or the Receiver has the power to issue a warrant summoning the debtor, the debtor's spouse or any person who is found to or suspected to have the debtor's property in possession or believed to be indebted to the debtor or able to give statements in connection with the debtor's business or property to appear for inquiries or investigations and has the power to instruct such person to furnish documents or physical evidence in such person's custody authority in connection with the debtor's business or property.

If such person wilfully resists the warrant or the order, the Court has the power to issue a warrant of arrest for detention of such person until the order of the Court or the Receiver is complied with.

Section 118. Upon application by the Receiver, the Court has the power to issue a decree compelling persons having admitted their indebtedness to the debtor or having admitted their possession of the debtor's property to make repayment or deliver the property to the Receiver within the time deemed appropriate by the Court. If the decree is not complied with,

⁴⁹ Section 115 paragraph two is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁵⁰ Section 116 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁵¹ Section 117 paragraph one is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

the Receiver may apply to the Court for issuance of a writ of execution as if such persons were judgment debtors.

Section 119. When it appears that the debtor has the right to demand any person to make payment of money or deliver the property to the debtor, the Receiver shall serve such person a written notice demanding payment of money or delivery of the property to which the notice relates, with a statement therein that if such person intends to refuse to comply with the demand a refusal shall, within fourteen days as from the date of receipt of the notice, be made in writing with an indication of supporting reasons therefor, failing which such person shall conclusively be deemed to have been indebted to the debtor's estate in the amount stated in the notice.

If the person in receipt of the notice addresses to the Receiver a denial of the indebtedness within the time limit under the foregoing paragraph, the Receiver shall conduct an inquiry. If the Receiver considers that such person is not indebted, the Receiver shall strike the name of such person out of the list of debtors and notify it to such person. If the Receiver considers that such person is indebted in a certain amount, the Receiver shall, by a written confirmation, notify it to the person liable, with a statement therein that such person, if an objection is intended to be raised, shall file an objection with the Court within fourteen days as from the date of receipt of the confirmation.

If the person in receipt of the written confirmation files, by motion, an objection with the Court within the time limit under the foregoing paragraph, the Court shall consider it. If the Court is satisfied that the indebtedness exists, the Court shall issue a decree demanding such person to make payment of money or deliver the property to the Receiver. If the Court considers that the indebtedness does not exist, the Court shall issue an order dismissing it out of the list of debtors.

If the person in receipt of the notice from the Receiver addresses no denial to the Receiver or files with the Court no objection within the aforesaid time limit, the Receiver may apply to the Court for a decree compelling such person to perform the obligation within such time as the Court deems appropriate.

If such person fails to comply with the decree issued by the Court, the Receiver may apply to the Court for issuance of a writ of execution as if such person were the judgment debtor.

In the case where the person who is demanded to perform files an objection with the Court, the Receiver may apply, by motion, to the Court for an order seizing or attaching the property of the person filing the objection *pro tempore* before issuing an order with respect to such debt.

Section 120. If the nature of the debtor's business provides a reasonable justification for the continuance of its operation, the Receiver may, upon approval from the meeting of creditors, carry out the debtor's business for the purpose of completing the settlement of such business or may appoint any person or the debtor as a manager, with the powers and duties as may be determined.

If the Receiver appoints any person other than the debtor as a manager, such person must give security as ordered by the Receiver and has the right to receive remuneration as determined by the meeting of creditors. If it is not so determined, the Receiver shall make the determination thereof.

The manager must prepare such account to be submitted as ordered by the Receiver.

Section 121. If the debtor is a Government official, when the Court has issued a receivership order, the Receiver has the right to receive from the authority the debtor's salaries, pension, annuity, military pension or money of a similar nature for the purposes of collection into the estate and distribution amongst creditors, provided that the Receiver must pay such living expenses of the debtor and his family as suitable for conditions in life.

The provisions of the foregoing paragraph shall also apply to the case where the debtor has the right to receive money from a non-governmental entity or organisation.

Section 122. Within three months as from the date of the Receiver's knowledge that the debtor's property or contractual right bears unreasonably greater burdens than benefits to be derived therefrom, the Receiver has the power to refuse to accept such property or contractual right.

Any person who suffers loss in consequence of the Receiver's refusal has the right to apply for payment in compensation for such loss.

Section 123. Upon the debtor being adjudged bankrupt, the Receiver has the power to sell the property, as collected by the Receiver, by any method which is most convenient and produces best results.

A sale by any method other than by auction requires approval from the committee of creditors except that the property is perishable or delay will involve a risk of loss or costs incurred will exceed the value of such property.

A transferee of the property from the Receiver in a sale or distribution is not liable to taxes, duties or goods taxes levied in the year preceding the transfer.

Part 5
Distribution of Property

Section 124. The Receiver shall expeditiously distribute amongst creditors the property remaining from the amount set aside for payment of fees and expenses.

The distribution of property must be carried out every period not exceeding six months as from the date of the Court adjudging the debtor bankrupt unless the Court grants an extension of time upon a reasonable cause.

Section 125. The Receiver must set aside, as it is deemed appropriate, the distributable money which is subjected to any condition or challenge and fees as well as expenses which may be incurred and distribute the money remaining therefrom amongst other creditors.

Section 126. Before carrying out any distribution, the Receiver must publish it in at least one daily newspaper and give a notice thereof to creditors and the bankrupt not less than seven days in advance, with an indication of the date and time for examining the distribution account. If no objection thereto is made by anyone, such account is deemed to be correct and final, and the Receiver shall then publish the distribution at the Receiver's office and notify creditors of the amount distributable amongst them.

Section 127. If any interested person makes any objection to the distribution account, the Receiver shall consider the objection and explanations of creditors and the bankrupt, and shall then issue an order as the Receiver deems appropriate.

Any interested person may make an objection to such order by filing an application to the Court within seven days as from the date of hearing the order.

If an objection is filed with the Court, the Receiver shall defer payment until the Court issues an order. But, if the Receiver considers that such deferment will be injurious to interested persons, the Receiver may set aside such money payable on fees and expenses which may be incurred as is reasonable and distribute the remaining money amongst creditors who have made no objection.

Section 128. No distribution shall be made to any creditor when the aggregate amount of every distribution is less than one Baht.

Section 129. The bankrupt's husband or wife may receive a share of the distribution in the capacity as the creditor only when other creditors have received repayment of debt to their satisfaction.

Section 130.⁵² In the distribution of property amongst creditors, expenses and debts shall be paid for in the following order:

- (1) expenses incurred in the administration of the deceased debtor's estate;
- (2) expenses incurred by the Receiver in the management of the debtor's property;
- (3) expenses on the deceased debtor's funeral as suitable for the condition in life;
- (4) fees for the collection of property under section 179 (3);
- (5) fees incurred by the plaintiff creditor and lawyers' fees as determined by the Court or the Receiver;
- (6) taxes and duties due within six months prior to the receivership order and money which employees are entitled to receive prior to the receivership order in return for the service performed for the employer debtor in accordance with section 257 of the Civil and Commercial Code and the law on labour protection;
- (7) other debts.

If the money is not sufficient for full payment of debt in any order, the creditors in such order shall receive a share in the distribution *pro rata*.

Section 130 bis.⁵³ In the case where any debt under section 130 (7) is specified by law or by a contract to the effect that the creditor has the right to receive payment only when other creditors have received payment in full, such creditor remains entitled to receive a share in the distribution of the property in accordance with his right as specified by such law or contract.

Section 131. Before the final distribution, the Receiver shall give persons to whom wages or money advanced at the Receiver's order remain unpaid a notice demanding them to furnish an account of the unpaid money within fourteen days as from the date of receipt of such notice. If the same is not furnished within the time specified, the Receiver shall carry out the final distribution and make payment without regard to such unpaid money. If the person in receipt of the notice fails to perform the said action, such person loses the right to make a claim therefor.

The Receiver may grant an extension of the time limit under the foregoing paragraph when there arises a reasonable cause.

⁵² Section 130 is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁵³ Section 130 *bis* is amended by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 132. When all the debts have been paid for in full as provided in this Act, together with fees and expenses incurred in a bankruptcy action, the remaining property, if any, shall be returned to the bankrupt.

Part 6

Closure of the Action

Section 133. When the Receiver has carried out the final distribution of the debtor's property or has ceased the action as agreed upon in the composition in satisfaction of debts or when the debtor has no property for distribution, the Receiver may prepare a report indicating the statements of affairs and accounts of revenues and expenses in the bankruptcy action for submission to the Court and make a request to the Court for ordering a closure of the action.

When the Court has considered the report and accounts submitted by the Receiver in conjunction with objections made by creditors or interested persons, the Court may or may not order a closure of the action.

If the Court orders to the effect that the action not be closed, the Court may, upon application by way of a motion being submitted by a creditor or an interested person, order that the Receiver be liable for any action or omission in contravention of his duty.

The order for a closure of the action has the effect of discharging the Receiver from liability in the course of his duty up to the date of the Court's order.

If it appears that the Court erred in issuing the order, the Court may cancel the order issued for a closure of the action.

Section 134. The order for a closure of the action has the mere effect of suspending all management without terminating the bankruptcy action and without precluding the Receiver from the following duties:

- (1) the duties under section 160;
- (2) the duty to approve such transactions as provided by law;
- (3) the duty to examine accounts of revenues and expenses of the bankrupt.

If the Receiver considers that the bankrupt has fresh property, the Receiver may apply to the Court for the action to be reopened.

Part 7
Annulment of Bankruptcy

Section 135. Upon application of an interested person or the Receiver, the Court has the power to annul the bankruptcy if there appears any of the following circumstances:

(1) the Receiver is unable to act to achieve successful results for the benefit of all creditors because the plaintiff creditor fails to provide assistance or pay fees or costs or give security money as required by the Receiver and there are no other creditors able or willing to perform such act within the period of one month as from the date of the plaintiff creditor's disobedience or neglect;

(2) the debtor should not have been adjudged bankrupt;

(3) the bankrupt's debts have been paid in full;

provided that if the debtor refuses to pay any debt but agrees to make an agreement and guarantees to the Court that payment shall be made in full together with fees or if the creditor is not found but the debtor deposits with the Court the full amount, it shall be deemed that such debt has been paid in full;

(4) over the period of ten year as from the time when he has carried out the final distribution of property or when there is no more property for distribution amongst creditors, the Receiver has been unable to collect any further property of the debtor and no request has been made by any creditor to the Receiver for the collection of property of the bankrupt.

Section 136. The order annulling the bankruptcy under section 135 (1) or (2) does not discharge the debtor from the debts.

Section 137. The order annulling the bankruptcy is not prejudicial to any act previously done by the Court or the Receiver while the bankrupt's property shall vest in any particular person as determined by the Court or, if it is not so determined, shall be returned to the bankrupt.

Section 138. Upon the order annulling the bankruptcy, the Receiver shall publish it in the Government Gazette and in at least one daily newspaper.

CHAPTER V
RECEIVER

Part 1
Appointment and Removal

Section 139. The Minister has the power to appoint one or more persons, as he deems appropriate, to be a receiver or receivers, whether the appointment is made in the appointee's individual or *ex-officio* capacity, and has the power to remove the appointee.

The appointment or removal of the receiver shall be published in the Government Gazette.

Paragraph three⁵⁴ (Repealed)

Part 2
Powers and Duties

Section 140. In acting as a party to an action in Court, in the management of the debtor's property or in performing any other act in discharge of his duties, the Receiver shall use the title "Receiver of the estate of, the Debtor" or "Receiver of the estate of, the Bankrupt", with the name of the debtor or the bankrupt, as the case may be, being inserted in the blank.

Section 141. In the court proceedings, the Receiver has the power to hire a lawyer to act on his behalf.

Section 142. Apart from those being provided in other sections, the Receiver has the following duties:

(1) to report matters in connection with the debtor's business, property or conduct as required by the Court;

(2) to assist in any interrogation of the debtor or other persons in court proceedings under this Act.

⁵⁴ Section 139 paragraph three is repealed by the Bankruptcy Act, (No. 6), B.E. 2543 (2000).

Section 143. In the performance of duties, the Receiver may apply to the Court for issuing any order in connection with matters in which problems arise.

Section 144. If the Receiver considers it necessary to make a loan of money for the purpose of the management of the debtor's property, the Receiver may do so upon permission by the Court.

Section 145. The Receiver may do any of the following acts only upon approval by the committee of creditors:

- (1) withdrawing any seizure of property in a bankruptcy action;
- (2) transferring any property otherwise than by public auction;
- (3) waiving any rights;
- (4) instituting or withdrawing a civil action in connection with the property in a bankruptcy action or instituting or withdrawing a bankruptcy action;
- (5) making a compromise or referring a dispute to arbitration.

Section 146. If the bankrupt, any creditor or any person suffers loss as a result of any act or decision of the Receiver, such person may file an application by motion with the Court within fourteen days as from the date of the knowledge of such act or decision. The Court has the power to issue an order affirming, overruling or amending it or any other order as the Court deems appropriate.

Section 147. In the performance of duties, the Receiver is not personally liable unless the act in question has been done with malicious intent or through gross negligence.

Section 148. In instituting an action against the Receiver or any other official under this Act in respect of his act or omission provided in this Act, if the institution is not made within six months as from the date on which a *locus standi* arose, such action shall be deemed to have been barred by prescription.

CHAPTER VI
COURT'S POWERS AND BANKRUPTCY PROCEEDINGS

Part I
Court's Powers

Section 149.⁵⁵ (Repealed)

Section 150. An action or a petition for bankruptcy adjudication shall be filed with the Court in the territorial jurisdiction of which the debtor is domiciled or carries on business, whether personally or by representation, at the time of filing the action or the petition or within one year antecedent thereto.

Section 151. The Court shall exercise oversight to ensure that the Receiver performs the duties properly. For this purpose, the Court has the power to instruct the Receiver to prepare statements explaining accounts or any matters in connection with the bankruptcy proceedings or may order any act or omission as the Court deems appropriate.

Section 152. If the Receiver has caused any damage to the estate in a bankruptcy action with malicious intent or through gross negligence, the Court has the power to order the Receiver to make compensation personally as the Court deems appropriate.

Part 2
Bankruptcy Proceedings

Section 153.⁵⁶ (Repealed)

Section 154. In an action in which the Court has issued an interim receivership order against the debtor, if the plaintiff creditor abandons the action, withdraws the action or is in default of appearance, the Court shall, before striking the action out of the case-list, publish it in at least one daily newspaper for creditors' information, not less than seven days in advance.

⁵⁵ Section 149 is repealed by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

⁵⁶ Section 153 is repealed by the Bankruptcy Act, (No. 5), B.E. 2542 (1999).

Section 155. The plaintiff creditor has the duty to look after interests of all creditors, assist the Receiver in the collection and distribution of the debtor's property and be liable for all fees, damages and expenses in the bankruptcy action. As security for this liability, the Receiver has the power to demand security payment from the plaintiff creditor in such an amount as he deems appropriate.

Section 156. If the plaintiff creditor refuses or neglects to assist the Receiver or fails to give security as specified in section 155 within seven days as from the date of receipt of the notification, the Receiver, with the approval by the meeting of creditors, has the power to appoint any other creditor as the plaintiff creditor.

Section 157. When any notice summoning any meeting or notifying any matter has been given to creditors within the Kingdom, the fact that some of the creditors have not received it does not cause any impairment of such meeting or such matter.

Section 158. Any interested person who considers that the Receiver does not have the right to seize any particular property shall submit an objection to the Receiver. Upon receipt of such objection, the Receiver shall conduct an inquiry and issue an order. If the Receiver issues an order refusing to withdraw the seizure, such person has the right to file a motion with the Court within fourteen days as from the date of the knowledge of such order. Upon receipt of the motion, the Court shall consider it and issue an order in the same manner as in an ordinary action, provided that the Receiver shall also be summoned to appear in his defence.

Section 159. When any judgment or order has been passed or issued, the Receiver shall be notified thereof.

CHAPTER VII

INQUIRIES AND PENALTIES

Part 1

Inquiries

Section 160. During bankruptcy proceedings, if there arises a reasonable cause to believe that the debtor or any person commits a criminal offence in connection with bankruptcy, the Receiver shall also be an inquiry official under the Criminal Procedure Code.

In the case where the public prosecutor is of the opinion, which is inconsistent with that of the Receiver, that no prosecution should be pursued, the brief shall be referred to Director-General of the Department of Public Prosecution for making the determination thereon.

Part II Penalties

Section 161. Any debtor who contravenes the provisions of section 67 (3) without any reasonable excuse shall be liable to a fine not exceeding one hundred Baht or to imprisonment for a term not exceeding two months or to both.

Section 162. Any debtor who contravenes the provisions of section 64, section 65, section 79 or section 80 without any reasonable excuse or obstructs the Receiver in the performance of the duty under section 16 (1) shall be liable to a fine not exceeding two hundred Baht or to imprisonment for a term not exceeding four months or to both.

Section 163. Any debtor who does any of the following acts shall be liable to a fine not exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both:

- (1) contravening the provisions of section 23, section 30 or section 67 (1) or (2) without any reasonable excuse;
- (2) omitting to give material statements or giving false statements in connection with his business or property to the Court, the Receiver or a meeting of creditors, unless the absence of fraudulent intention is proven;
- (3) failing to notify the Receiver within one month when it is known or there is a justifiable reason to believe that false indebtedness has been invoked in the application for repayment in a bankruptcy action.

Section 164. During the period of one year prior to a petition requesting that the debtor be adjudged bankrupt and thereafter but prior to a receivership order, any debtor who does any of the following acts shall be liable to a fine not exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both:

- (1) diverting, hiding, destroying, damaging or altering seals, account books or documents related to his business or property or conniving at such act, unless the absence of an intent to conceal the nature of his affairs is proven;

provided that if seals, account books or documents are lost, damaged or altered, it shall *prima facie* be presumed that the debtor is the perpetrator;

(2) omitting to record material statements or recording false statements in account books or documents related to his business or property or conniving at such omission or action;

(3) pledging, mortgaging or disposing of any property which has been acquired on credit and the price of which has not yet been paid for, unless such act is in the course of the debtor's ordinary business and the absence of any fraudulent intent is proven;

(4) taking a loan from any other person by deceit or concealing, transferring or delivering his property dishonestly or causing or allowing any other person to cause his property to be encumbered dishonestly or allowing himself or conspiring with any other person to allow himself to be ordered by the Court to pay any debt which he should not be liable to pay.

Section 165. During the period as from the time of the Court's receivership order up to the time of the discharge of bankruptcy, any debtor who does any of the following acts shall be liable to a fine not exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both:

(1) taking a loan from any other person in the amount of one hundred Baht upwards without informing such person that the debtor is under receivership or is bankrupt;

(2) carrying out trade or business using his name or designation deferent from that indicated in his receivership or bankruptcy and acquiring therefrom a loan from any other person without informing such person that the debtor is under receivership or is bankrupt;

(3) carrying out trade or business using a name or a designation of any other person as a sham;

(4) carrying out trade or business using his name or designation deferent from that indicated in his receivership or bankruptcy without publishing the following particulars in at least two daily newspapers:

(a) his name and designation indicated in his receivership or bankruptcy;

(b) the address of his trade or business at the time of his receivership;

(c) his name and designation intended to be in further use in trade or business;

(d) the nature of trade or business intended to be continued;

(e) the address at which trade or business is intended to be carried out.

Section 166. Any debtor, having indebtedness in consequence of trade or business at the time of receivership, who does any of the following acts shall be liable to a fine not exceeding five hundred Baht or to imprisonment for a term not exceeding one year or to both:

(1) at an interrogation by the Receiver or an inquiry by the Court, failing to give justifiable reasons for the loss of a large amount of property during the period of one year prior to a bankruptcy petition or thereafter but prior to the receivership order;

(2) creating a debt of which repayment can be applied for in a bankruptcy action, without any cause to believe in the prospect of it being paid.

Section 167. Any person, having been carrying out business specified in the law on business registration, who over the past three years as from the date of absolute receivership fails to have accounts which sufficiently indicate the operation of his business or his financial position as specified in the law on accounting as in force at that time shall be liable to a fine not exceeding five hundred Baht or to imprisonment for a term not exceeding one year or to both.

Section 168. During the period of six months prior to a petition requesting that the debtor be adjudged bankrupt and thereafter but prior to a discharge from bankruptcy, any debtor who leaves or attempt to leave the Kingdom with the property, worth more than one hundred Baht, which is required by law to be distributed amongst creditors in payment of debts owed to them shall be liable to a fine not exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both unless the absence of fraudulent intent is proven.

Section 169. When the Court has issued a receivership order, any debtor who conceals himself or has absconded from the place at which he last lived or carried out trade or business or has left the Kingdom with a view to avoiding warrants or appointments of the Court in a bankruptcy action or avoiding any inquiry or interrogation in connection with his business or property or causing difficulty in or impediment to bankruptcy proceedings shall be liable to a fine not exceeding five hundred Baht or to imprisonment for a term not exceeding one year or to both.

Section 170. When the Court has issued a receivership order, any debtor who commits any fraud or gives or promises or agrees to give any benefit to a creditor with a view to obtaining such creditor's consent to the debt composition or any agreement relating to his business or bankruptcy or with a view to preventing an objection to a request for a discharge from bankruptcy shall be liable to a fine not exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both.

Section 171. Any creditor or any creditor's representative who makes an allegation or applies for repayment of debt in a bankruptcy action or a debt composition or an agreement relating to the debtor's property with material falsity shall be liable to a fine not

exceeding one thousand Baht or to imprisonment for a term not exceeding two years or to both unless the absence of fraudulent intent is proven.

Section 172. Any creditor or any creditor's representative who demands, accepts or agrees to accept property, security or any other benefit for his own benefit or for the benefit of any other person in return for his giving consent to or refraining from making an objection to a debt composition or a discharge from bankruptcy shall be liable to a fine not exceeding five times the value of such undue benefit.

Section 173. Any person who, knowing of the receivership order or the would-be receivership order, diverts, conceals, takes, disposes of or manages the debtor's property dishonestly shall be liable to a fine not exceeding two times the value of such property or to imprisonment for a term not exceeding two years or to both.

For the purpose of this section, it shall *prima facie* be presumed that when the Receiver has published a receivership order in the Government Gazette and in a daily newspaper every person has had the knowledge of such order.

Section 174. Any person who makes an untrue allegation that he is the creditor with an intent to examine or obtain a copy of any document relating to bankruptcy proceedings shall be liable to a fine not exceeding five hundred Baht.

Section 175. Any of the following persons has the same duty and criminal liability as that imposed on the debtor in respect of transactions done by him at the time of his operation of the debtor's affairs:

- (1) if the debtor is a registered ordinary partnership or a limited partnership, a managing partner or a partner intervening in the management of the affairs or an auditor of such partnership;
- (2) if the debtor is a limited company, a promoter, a director, a worker, an employee or an auditor of such company;
- (3) if the debtor is any juristic person other than those in (1) and (2), a director or an auditor of such juristic person;
- (4) if the debtor carries out through an agent or through an employee, such agent or employee of the debtor; or
- (5) if the debtor becomes deceased, an heir, the administrator of the estate or the controller of property of such debtor.

CHAPTER VIII
MISCELLANEOUS PROVISIONS

Part 1
Unpaid Money

Section 176. When the Receiver has carried out the final distribution of property, the Receiver must, if there remains any unpaid money in respect of which no one comes forward to take receipt thereof within five years as from the date of the Court's order for the closure of the action, publish it in at least one daily newspaper instructing creditors to take receipt thereof within two months, failing which such money shall devolve on the State.

Part 2
Bankruptcy Relating to Foreign Elements

Section 177. The receivership or bankruptcy under this Act has effects on the debtor's property throughout and only within the Kingdom.

The receivership or bankruptcy under the law of any other country has no effect on the debtor's property located in the Kingdom.

Section 178. A foreign creditor domiciled outside the Kingdom may apply for repayment of debt in a bankruptcy action only when the following conditions are satisfied:

- (1) he must prove that creditors in Thailand are similarly entitled to apply for payment of debt in a bankruptcy action under the law and in the Court of his country;
- (2) he must make a declaration as to whether, and to what extent, he has received or is entitled to receive property or a share in the property of the same debtor outside the Kingdom and a declaration that, if any, he must agree to deliver the property or the share in the property of such debtor to be added as part of the debtor's estate within the Kingdom.

Part 3
Fees

Section 179.⁵⁷ Fees in a bankruptcy action shall be charged at the rates as follows:

(1) the Court fee for an action or a petition for bankruptcy adjudication shall be five hundred Baht;

(2) the fee for filing an application for repayment of debt in a bankruptcy action shall be two hundred Baht, except in the case of an application by a judgment creditor or a creditor applying for repayment of debt in the amount not exceeding fifty thousand Baht;

(3) the Court fee in the case of an appeal in connection with an application for payment of debt shall be two hundred Baht;

(4) the fee for the collection of property shall be charged at the rate of three percent of the net amount collected, provided that, in respect of the property which is not sold or disposed of, the fee shall be charged at the rate of two percent of the value of such property and that, in the case of a debt composition, the fee shall be at rate of three percent of the amount to which the debt composition relates, whichever is higher.

Any other fees shall be charged at the same rates as those under the Civil Procedure Code.

Section 180. If there remains a sufficient amount of money, the Receiver shall pay fees and travelling expenses incurred by witnesses and persons summoned to appear for inquiries in accordance with the rates provided in the Civil Procedure Code *mutatis mutandis*.

Section 181. The forms required to be submitted by the debtor to the Receiver under this Act shall be exempt from stamp duties.

Countersigned by:

Piboonsongkram
Prime Minister

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⁵⁷ Section 179 is amended by the Bankruptcy Act, (No. 7), B.E. 2547 (2004).