

Key principle of Bankruptcy Act (No. 10) (2018)

Bankruptcy Act (No.10) (2018)(excluding the cross- border insolvency part which is currently in consideration of internal working group) adds an alternative of commencement criteria (inability to pay) of the business reorganization in Chapter 3/1, adjusts the provisions to be in accordance with the Business Security Act (definition of creditor to include secured creditor in BSA and the sections that are already amended by NCPO No. 21/2560), specifies a duty to inform to the person who has control over debtor's properties to the official receiver within 1 month following the date he/she receives the receiver's notification, advertising court's order and receiver's order via public electronic media, improves efficiency of law enforcement, and improves the administration to professionalism and higher ethics.

1. (6) of paragraph one of Section 90/12 of the Insolvency Act B.E. 2483 (1940) as amended by the Bankruptcy Act (No. 4) B.E. 2541 (1998) shall be repealed and replaced as follows:

“(6) 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 or upon expiration of a period of one year from the date the Court has issued an order accepting the petition. The Court may extend such period on not more than two occasions for a period not exceeding six months for each occasion;”

2. The followings shall be added to Section 90/14 *bis* of Bankruptcy Act B.E. 2483 (1940):

“Section 90/14 *bis* If the property given as security is of perishable nature, or the delay will involve a risk of loss or costs incurred will exceed the value of such property, a secured creditor may proceed to sale such property and hold the money as security in place of the property.”

3. Section 90/46 of the Bankruptcy Act B.E. 2483 (1940) as amended by Bankruptcy Act (No. 4) B.E. 2541 (1998) shall be repealed and replaced by the followings:

“Section 90/46The resolution approving the plan must be:

“(1)a resolution of a meeting of each and every group of creditors not being the group of creditors under section 90/46 *bis*, approved by a majority of the creditors and having the aggregate amount of debts owed to such creditors not less than two-third of the total debts owed to

the creditors attending the meeting of creditors in person or by proxy and voting on such resolution; or

“(2)a resolution of a meeting of at least one group of creditors not being the group of creditors under section 90/46 *bis*, approved by a majority of the creditors and having the aggregate amount of debts owed to such creditors not less than two-third of the total debts owed to the creditors attending the meeting of creditors in person or by proxy and voting on such resolution and when computing the amount of debts, the aggregate amount of the debts of the creditors voting to approve in all meetings of every group of creditors represents not less than fifty percent of the total 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.”

4. The followings shall be added to Section 148/1 of Part 2 Powers and Duties, Chapter 5 Receiver, of the Insolvency Act B.E. 2483 (1940):

“Section 148/1If any provision of this Act requires the Receiver to publish the Court’s order or decision, or the Receiver’s announcement or order in daily newspaper, the Receiver may, instead, advertise through other public electronics media as may be determined by announcement issued by the Director-General of the Department of Public Prosecution.”

5. Section 173 paragraph two of the Bankruptcy Act B.E. 2483 (1940) shall be repealed and replaced by the followings:

“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 or advertise through other public electronics media, every person has had the knowledge of such order.”