

The Current State of Enforcing Contracts and Resolving Insolvency in Thailand

**for the Visit of The World Bank Delegates
on Ease of Doing Business Project**

**On 9 May 2017
Bangkok, Thailand**

Legal Execution Department , Ministry of Justice



AGENDA

1. Roles of the LED

2. Enforcing Contracts

3. Resolving Insolvency



Roles of the LED

- Provide services in
 - Civil case enforcement
 - Bankruptcy case administration
 - Reorganization
 - Liquidation
 - Deposit of property
- Provide legal information concerning legal execution and deposit of property to the public
- Provide mediation service at enforcement phase (post-judicial mediation)

Civil Procedure Code

Bankruptcy Act

3



Roles of the LED

- Standardize and improve the practices nationwide – 116 offices
- Modernize laws and regulations related to our functions to cope with the social and economic development
- Develop effective process and administration to increase efficiency by using more IT
- Equip the officers with knowledge and ability at professional level – capacity building

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Thailand is one of
the best investment
countries having
laws with int'l
standards

EASIER ANYWHERE BETTER

15/01/59

(Start August 2014)

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The LED is a catalyst to strengthen Thailand position as one of the best investment countries with a greater competitiveness. Laws related to civil enforcement and bankruptcy must be timely and meet with international standards. Easier and faster procedures with fully automation is required and implemented.

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Quick actions

Innovative, proactive, analytical, quick-win, and participatory approach

Since Nov. 2014

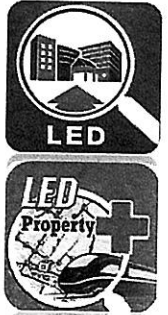
Establish "Working Groups" for law revision and EoDB questionnaire

Propose 6 legal reforms

- two Amendments to CPC
- Bankruptcy Act No. 8
- Business Reorganization for SMEs
- Ministerial Decree on Public Auction
- Ministerial Decree on Plan Preparer and Administrator

Coordinate with The World Bank, private sectors, and lawyers

Apply IT to working processes e.g. "LED Property" and "LED Property Plus" mobile apps and E-services



Enforcing Contracts

Thailand's Rank in Asia/ ASEAN

- Korea Rep. (1)
- Singapore (2) / (1)
- China (5)
- Taiwan (14)
- Hong Kong (20)
- Malaysia (42) / (2)
- Bhutan (47)
- Japan (48)
- Thailand (51) / (3)
- Vietnam (69) / (4)

**Thailand is at the 9th place in Asia and the 3rd in ASEAN



Enforcing Contracts

Year	2016	2017	Change	Korea Rep.	Singapore
Ranking	57	51	+6	1	2
Distance to Frontier (DTF)	62.69%	64.54%	+1.85	84.15	83.61
Time (days)	440	440	-	290	164
▪ Filing and Service	60	60		20	6
▪ Trial and Judgment	260	260		150	118
▪ Enforcement of Judgment	120	120		20	40
Cost (% of claim)	19.5	19.5	-	12.7	25.8
• Attorney Cost (% of claim)	10	10		9	20.9
• Court Cost (% of claim)	6.5	6.5		3	2.8
• Enforcement Cost (% of claim)	3	3		0.7	2.1
Quality of judicial processes index (0-18)	6.5	7.5	+1	14.5	15.0



Enforcing Contracts Questionnaire

Assumption-based

Small Claim

Located in the Capital

Movable Assets

Public Sale

Observation – not many movable assets for the public sale at the LED



Remarks

TIME - For the public sale of movable asset, normally time taken is shorter than 120 days that is for immovable asset, such as land, house, or condominium, and beyond the scope of asset in case assumption of the Enforcing Contracts questionnaire.

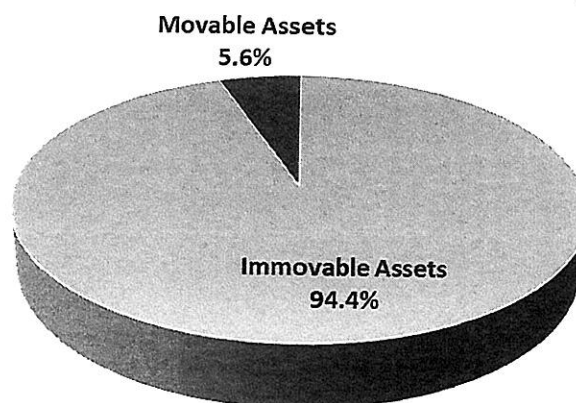
- Due to its less complicated nature, the process for movable asset takes less than 120 days, i.e., **75 days**.

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Remarks

Seizures in 2016 (1 Jan - 31 Dec 2016)



- In 2016, there were 86,227 seizures of assets, totaling value of 72,683,314,635.13 Baht.
- 81,484 are seizures of immovable assets (94.4%), totaling value of 70,678,147,359.04 Baht (97.24%).

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Remarks

Civil Cases Completely Enforced within 75 Days								
No.	Office	Court	Red Case Number	Defendant	Date of Seizure	Evaluated Price	Procedure	Time (Days)
1.	Ayudthaya Legal Execution Office	Ayudthaya Provincial Court	1021/2559	Mr. Sakchai or Natwanalai, et al.	10 th November 2016	30,000	- Seizure of necklace on 10 th November 2016 - Making distribution account on 5 th January 2017	56 Days
2.	Civil Case Enforcement Bangkok Office 4	Pra-Khanong Provincial Court	672/2555	Mr. Chayaphong Amornsrisil	19 th November 2015	52,158	- Seizure of money paid for appeal on 19 th November 2017 - Making distribution account on 21 th December 2017	32 Days
3.	Chumporn Legal Execution Office	Chumporn Provincial Court	Phor Bor. 584/2559	Mr. Phassakorn Kaewkrood	9 th January 2017	157,000	- Seizure of two buildings on 9 th January 2017 - Making distribution account on 7 th march 2017	57 Days
4.	Khonkaen Legal Execution Office	Khonkaen District Court	Phor Bor. 4531/2553	Ms. Wanna Sopha, et al.	11 th January 2016	4,500	- Seizure of property in a house on 11 th January 2017 - Making distribution account on 24 th march 2017	72 Days

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Remarks

- **COST** - Enforcement Fees is 0%, not 3% as indicated in the assessment.
 - (1) 1,500 Baht or 41 USD for movable assets (0.4%)
 - (2) 2,500 Baht or 69 USD for immovable assets
 (LED Order No. 452/2548)
- Section 169/2 of CPC states that debtor is liable for fees and costs, not the creditor.
- The costs for creditor become zero as the creditor will get reimbursed from the debtor asset at the end of the process.



Enforcing Contracts: Reforms

Since 2016

1. Law Reform

Major reform in enforcement of judgment

Draft Amendment Act on Civil Procedure Code (No. ..) B.E. (Part 2 Enforcement of Court Judgment or Order)

- streamline process in issuing compliance order and writ of execution, and public auction
- prevent abuses to prolong the case
- improve the seizure of property and public auction to cope with the changing economic and social situation.



Passed the second and third readings at National Legislative Assembly on 23rd March 2017



Enforcing Contracts: Reforms

Since 2016

2. Case Management and Adoption of IT

2.1 MOU with Thon Buri Civil Court

On 16th March 2017, the LED and Thon Buri Civil Court signed MOU on data linkage which was the first linkage system for real time receipt of the writ of execution on 17th March 2017.

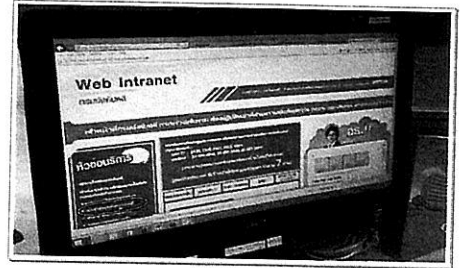
It is deemed as a starting point to expand cooperation with other courts and develop the system towards “Thailand 4.0” policy.



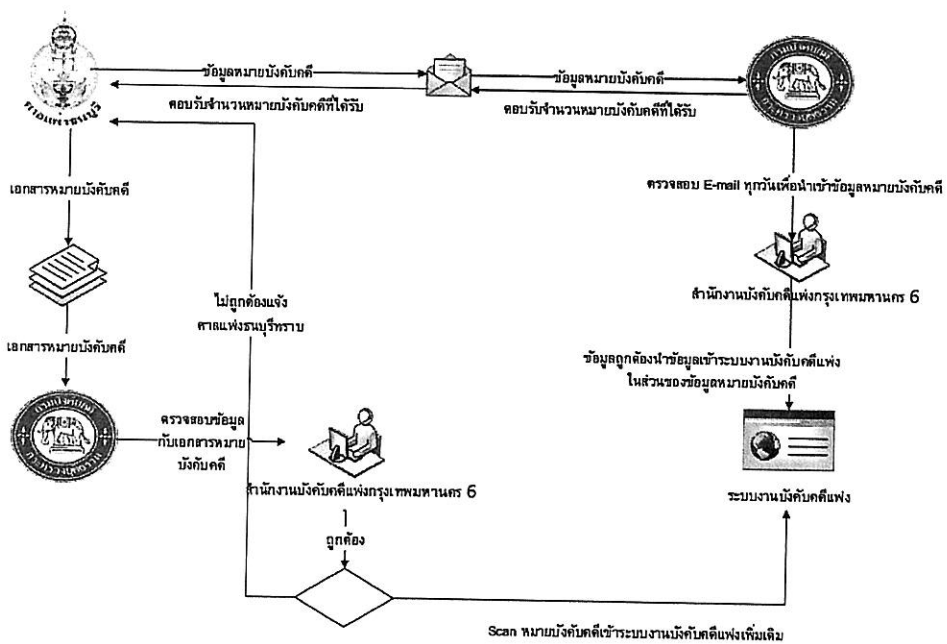
Enforcing Contracts: Reforms

Since 2016

2. Case Management and Adoption of IT



Enforcing Contracts: Reforms



Process between Thon Buri Civil Court and the LED
On 8th May 2017, the LED has received 267 writs of execution.



Enforcing Contracts: Reforms

Since 2016

2. Case Management and Adoption of IT

2.2 E-Filing and E-Payment - On 21st February and 10th March 2017, the LED consulted with the Bank of Thailand ways to facilitating bankruptcy and business reorganization cases by encouraging banks and financial institutions that are creditors to use E-Filing and E-Payment.

2.3 Guidelines setting duration in creation of distribution account

2.4 Setting KPI (Key Performance Indicator) that requires completing 30% of unfinished cases over 10 years, to ensure a speedy process and minimize a case backlog



Enforcing Contracts: Reforms

Since 2016

2. Case Management and Adoption of IT

2.5 Mobile Application

- Track status of the enforcement of civil judgment
- Track the amount of money in attachment
- make a reservation to contact the enforcement officer

The system is under the development and will be launched by May 2017.

2.6 Fast-track in distributing proceeds in civil cases under 400,000 Baht



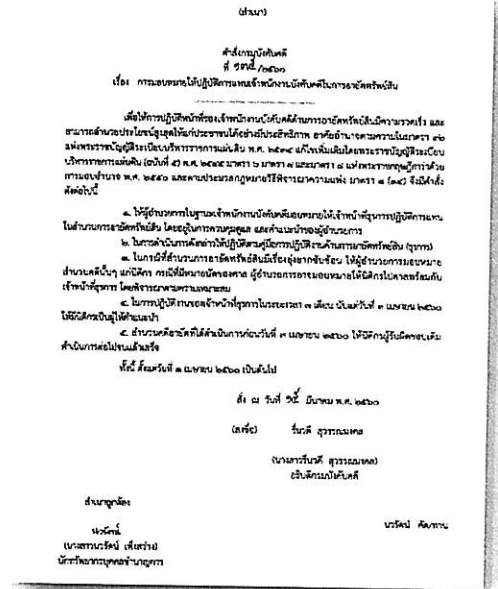
Enforcing Contracts: Reforms



2. Case Management and Adoption of IT

2.7 Improving the attachment of claim

By assigning administrative officer to perform the attachment on behalf of the enforcement officer since 3rd April 2017



Enforcing Contracts: Reforms



2. Case Management and Adoption of IT

2.8 Queue Management System

The system has been used for the first time at Bangkok Civil Case Enforcement Office 2 since January 2017, and now operated in all 6 Bangkok offices.

The LED is installing the queue management system in all 116 LED offices nationwide.





Enforcing Contracts: Reforms

Since 2016

3. Coordination and Participation

- Meetings with public and private sectors for example, on 2nd March 2017 at Novotel Bangkok on Siam Square



Resolving Insolvency

Thailand's Rank in Asia/ ASEAN

- Japan (2)
- Korea Rep. (4)
- Taiwan (22)
- Thailand (23) / (1)
- Hong Kong (28)
- Singapore (29) / (2)
- Malaysia (46) / (3)
- China (53)
- Philippines (56) / (4)
- Cambodia (72) / (5)

**Thailand is at the 4th place in Asia and the best in ASEAN



Resolving Insolvency

Year	2016	2017	Change	Finland	Japan
Ranking	49	23		1	2
Distance to Frontier (DTF)	58.84%	77.08%	+18.24	93.89	93.16
Recovery Rate (cents on the dollar)	42.5	67.7	+25.2	90.3	91.8
Time (years)	2.7	1.5	-1.2	0.9	0.6
Cost (% of estate)	36	18	-18	3.5	4.5
Strength of insolvency framework index (0-16)	11.5	13	+1.5	14.5	14.0

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Resolving Insolvency: Strength of insolvency framework index

Strength of insolvency framework index (0-16)	Year 2017	Year 2018
Management of debtor's assets index	13.0	
Does the insolvency framework allow the continuation of contracts supplying essential goods and services to the debtor?	No 0.0	Yes 1.0
Reorganization proceedings index	All creditors	Only those creditors whose rights are modified or affected by the plan
Which creditors vote on the proposed reorganization plan?	0.5	1.0
Creditor participation index	No	Yes
Does the insolvency framework provide that a creditor has the right to request information from the insolvency representative?	0.0	1.0



Resolving Insolvency:

Strength of insolvency framework index

- Management of debtor's assets index

Continuation of contracts supplying essential goods and services to the debtor

- Section 90/12 (9) of the Bankruptcy Act, since 1998, allows debtor to continue his/her essential contracts in accordance to ordinary course of business.

(Sahafarms, Golden Line, Sahaviriya Steel Industries (SSI), and Kad Suan Kaew 2545)

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Resolving Insolvency:

Strength of insolvency framework index

- Reorganization proceedings index

creditors to vote on the proposed reorganization plan

- National Council for Peace and Order (NCPO) Order No. 21/2560 Clause 14, effective on 4th April 2017, repeals and replaces Section 90/46 of the Bankruptcy Act, amending the proportion of debts in the voting for the business reorganization plan from 75% to two-thirds, and removing the unimpaired creditors under Section 90/46 bis from voting for the business reorganization plan.

(Universal Can)

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Resolving Insolvency:

Strength of insolvency framework index

- **Creditor participation index**
Individual creditor's right to request information on debtor's business and financial affairs from the insolvency representative

- Section 90/42 and 90/46 of Bankruptcy Act stipulates that reorganization plan, which contains debtor's affairs, must be sent to each creditor.
- Section 90/55 of Bankruptcy Act empowers the committee of creditors in monitoring the implementation of the plan.
- Section 31, 32, 42, 43, and 64 of Bankruptcy Act allow access to the information through the meeting of creditors and the public examination of the debtor.
- In general, section 54 of Civil Procedure Code with Section 14 of Act on the Establishment of Bankruptcy Court and Bankruptcy Procedure, and Official Information Act B.E. 2540 (1997) give right to creditor and interested person to request Official Receiver for such information anytime.

(Union Frozen, Tanasarnsombat, and etc.)



Resolving Insolvency:

Recovery Rate (Time)

พ.ร.บ. ๑๑๔
ฉบับที่ ๑๑๔ พ.ร.บ. ๑๑๔
กระทรวงพาณิชย์
คำสั่งหัวหน้าคณะรักษาความสงบแห่งชาติ
ที่ ๑๑๔/๒๕๖๐
เรื่อง การวินิจฉัยบังคับคดีของเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้

ตามที่กระทรวงพาณิชย์ได้มีคำสั่งหัวหน้าคณะรักษาความสงบแห่งชาติที่ ๑๑๔/๒๕๖๐ ปรากฏในราชกิจจานุเบกษา เมื่อวันที่ ๑๖ กรกฎาคม ๒๕๖๐ เรื่อง การวินิจฉัยบังคับคดีของเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ ซึ่งกำหนดให้เจ้าพนักงานบริหารคดีมีอำนาจในการชำระหนี้ของเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ โดยไม่ต้องรอคำสั่งของศาลเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ และไม่ต้องรอคำสั่งของศาลเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ ซึ่งคำสั่งหัวหน้าคณะรักษาความสงบแห่งชาติที่ ๑๑๔/๒๕๖๐ ปรากฏในราชกิจจานุเบกษา เมื่อวันที่ ๑๖ กรกฎาคม ๒๕๖๐ เรื่อง การวินิจฉัยบังคับคดีของเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ ซึ่งกำหนดให้เจ้าพนักงานบริหารคดีมีอำนาจในการชำระหนี้ของเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ โดยไม่ต้องรอคำสั่งของศาลเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้ และไม่ต้องรอคำสั่งของศาลเจ้าพนักงานบริหารคดีในกรณีการชำระหนี้

๑๕. ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์
๑๕.๑ ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์
๑๕.๒ ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์
๑๕.๓ ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์
๑๕.๔ ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์
๑๕.๕ ให้เจ้าพนักงานบริหารคดี ๑๑๔๑ แห่งกรมการพาณิชย์และพาณิชย์

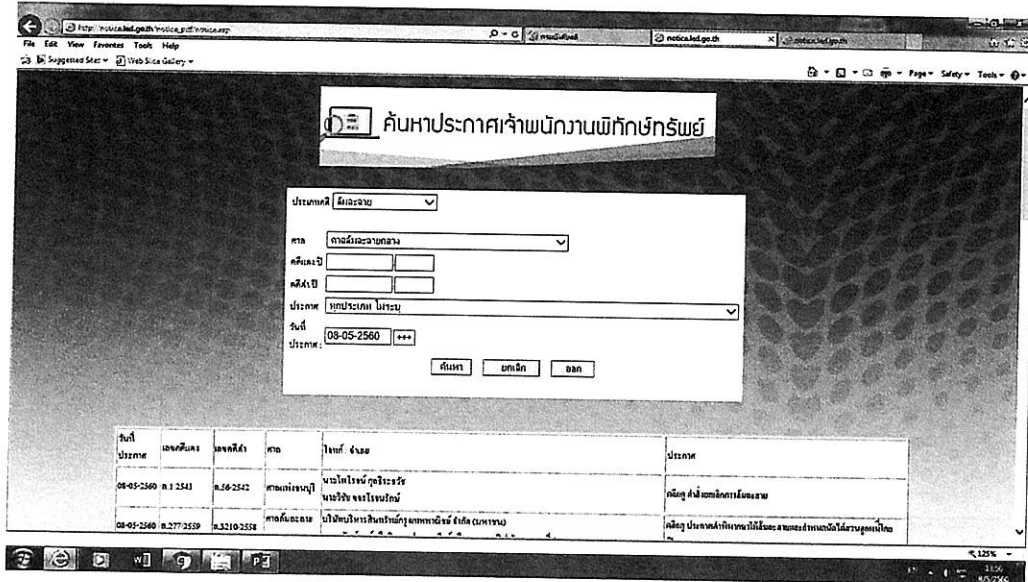
- Order of the National Council for Peace and Order (NCPO) No. 21/2560
 - Clause 15 adds Section 148/1 to the Bankruptcy Act, allowing Official Receiver to advertise court order or judgment, or the Official Receiver's announcement or order through other public electronics media instead of daily newspaper.
- Announcement of the Director-General of the LED Determining the Public Electronic Media in Advertisement through www.led.go.th.

Effective on 4th April 2017



Resolving Insolvency: Recovery Rate (Time)

- Court/ OR order or announcement on <http://www.led.go.th>

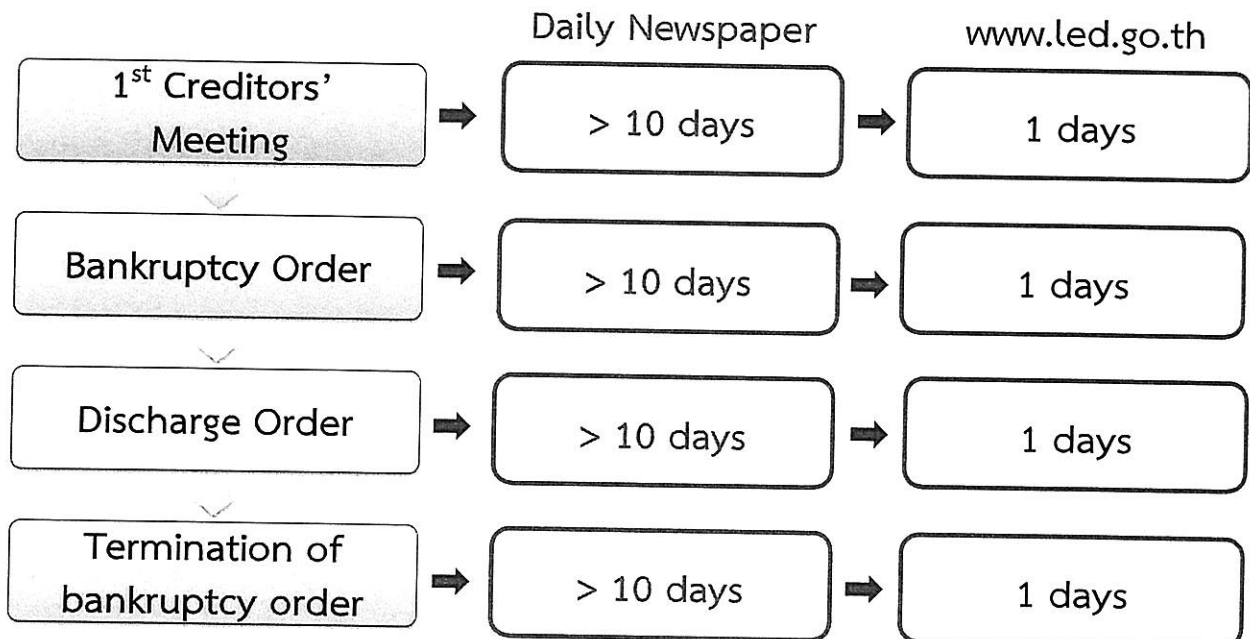


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Resolving Insolvency: Recovery Rate (Time)

Process of bankruptcy case under the new Section 148/1



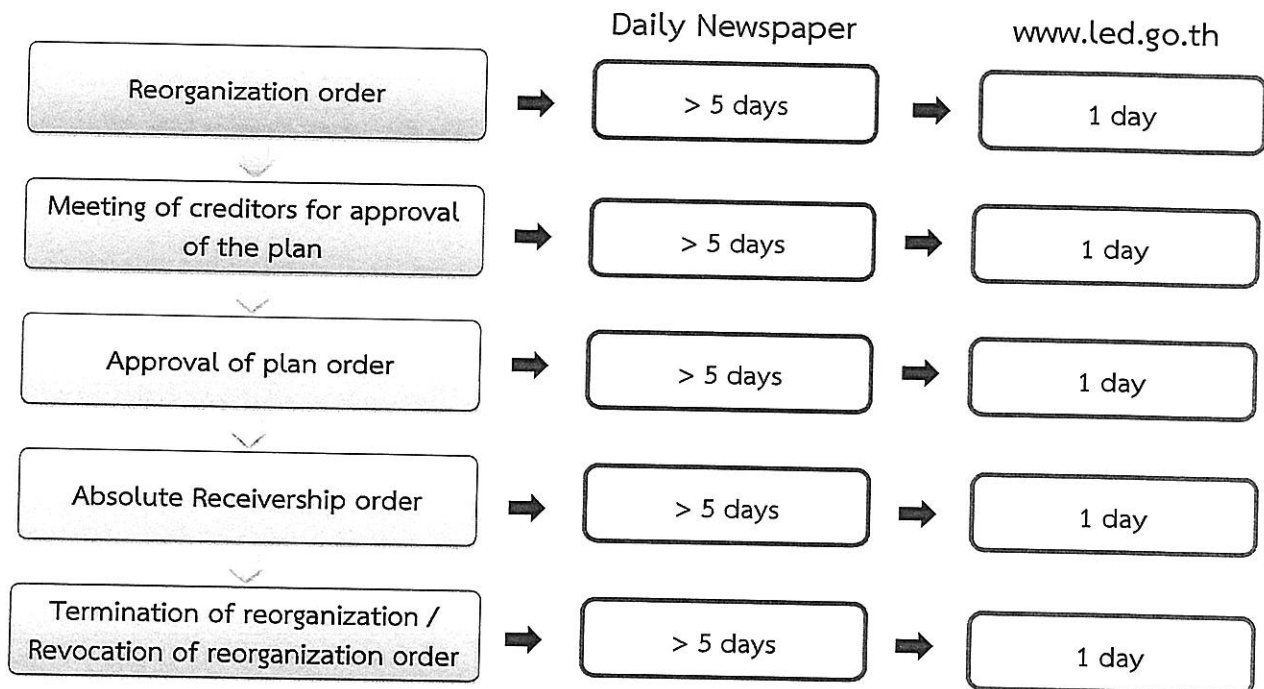
More than 40 days are shortened.

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Resolving Insolvency: Recovery Rate (Time)

Process of business reorganization case under the new Section 148/1



More than 20 days are shortened.

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Resolving Insolvency: Recovery Rate (Cost)

- 2017 Report: 18% of the estate (3 Million Baht of 17.2 Million Baht)
 - lawyer fees (7%)
 - fees of the insolvency representative (plan preparer) (5%)
 - other professionals involved, such as accountants and financial advisors (5%)
 - court fees (1%).

- The estate in case study assumption of 2018 is 18.6 Million Baht.
- Court fees: 0.27%
 - Court fees: 1,000 Baht
 - Advance for case administration in the court: 50,000 Baht (Section 90/7 of Bankruptcy Act)
- Other
 - Advance for case administration in the LED: 30,000 Baht by plan administrator

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Resolving Insolvency: Reforms

Since 2016

1. Law Reform



Draft Bankruptcy Act (No. ..) B.E.

- Adjusting the principles of the business reorganization in Chapter 3/1 to conform to business reorganization for SMEs in Chapter 3/2
- Adjusting the provisions to be in accordance with the Business Security Act
- Improving the efficiency of law enforcement,
- Supporting cross-border insolvency
- Improving the administration to professionalism and higher ethics.

27th Dec 2016: The Cabinet approved the law in principles.
7th Feb 2017 – present: under review of the Council of the State.



Resolving Insolvency: Reforms

Since 2016

2. Facilitating Bankruptcy and Business Reorganization Cases

- On 21st February and 10th March 2017, the LED consulted with the Bank of Thailand ways to facilitating bankruptcy and business reorganization cases by encouraging banks and financial institutions that are creditors to use E-Filing and E-Payment.
- On 5th May 2017, the LED consulted with the Revenue Department to review the regulations regarding bad debts in order to encouraging debt restructuring.



Resolving Insolvency: Reforms

Since 2016

3. Improving Efficiency in Law Enforcement *Greater Recovery Rate*

3.1 Linkage information with registrar offices and banks

- MOU with Bank of Thailand, the Thai Banker Association, and Thailand Securities Depository
- Letters to banks in payment of debtor's living allowance and asking to remit other money in the account to the Official Receiver

3.2 Mobile application to check the insolvency status

- expected to be used in May 2017
- now the service is operated through Government Smart Kiosks of Electronic Government Agency (Public Organization) (EGA).



Resolving Insolvency: Reforms

Since 2016

3. Improving Efficiency in Law Enforcement *Greater Recovery Rate*

3.3 Guidelines setting duration in creation of distribution account

3.4 Setting KPI (Key Performance Indicator) that requires completing 30% of unfinished cases over 10 years, to ensure a speedy process and minimize a case backlog

3.5 IT Development – Improvement the Asset-Tracking system in Fiscal Year 2018

3.6 Personnel Development, for examples, forensic accounting workshops with the World Bank, investigate of debtor and related persons in bankruptcy cases



Resolving Insolvency: Reforms

Since 2016

3. Improving Efficiency in Law Enforcement
Greater Recovery Rate

3.7 Organizing cross-border insolvency seminars

3.8 Restructuring the organization – establishing the investigation division and now it is under the consideration of the Office of Public Sector Development Commission



Resolving Insolvency: Reforms

Since 2016

3. Improving Efficiency in Law Enforcement
Greater Recovery Rate



Concept of Private Trustee

1 of 20-year National Strategy



Resolving Insolvency: Reforms

Since 2016

3. Improving Efficiency in Law Enforcement

Concept of Private Trustee



3.9 Changing business model from operator to regulator – one of the agenda in national reform of the National Reform Steering Assembly (NRSA). On 20th February 2017, the LED held a public hearing which Minister of Justice Suwaphan Tanyuwardhana presided

On 2nd May 2017, NRSA approved the development and will send the project to the Cabinet and the Committee for National Administration under the Frameworks of National Reform, National Strategy, and Reconciliation for further proceeding.



Resolving Insolvency: Reforms

Since 2016

4. Coordination and Participation

- Meetings with public and private sectors for example, on 2nd March 2017 at Novotel Bangkok on Siam Square





Resolving Insolvency: Reforms

Since 2016

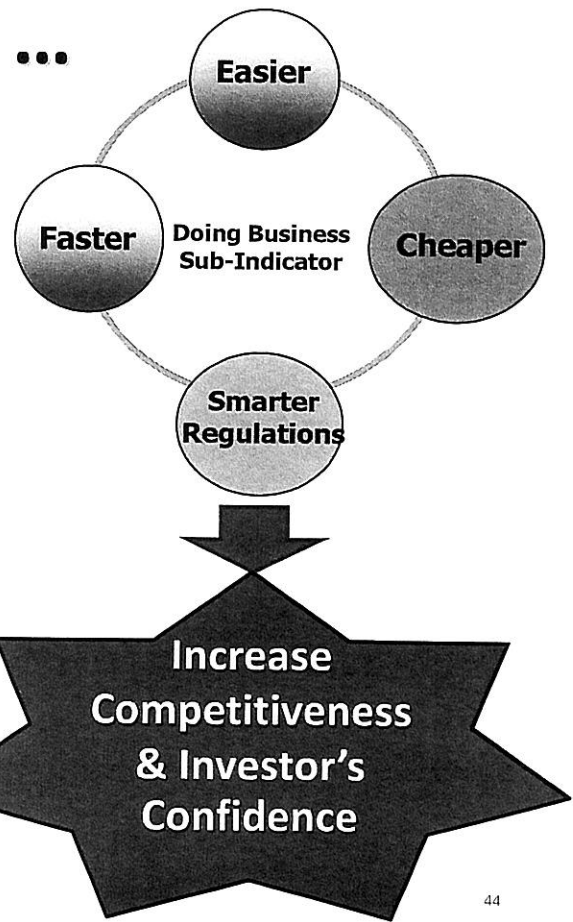
5. International Cooperation

- Meetings with the World Bank for the Report on Insolvency & Debt Restructuring to further develop law and working process further.



Aiming Towards ...

- Legal Reform
- Policy
 - Facilitation Enforcement Service
 - Computerization / E-Enforcement Enhancement





The LED is a catalyst to strengthen Thailand position as one of the best investment countries with a greater competitiveness. Laws related to civil enforcement and bankruptcy must be timely and meet with international standards. Easier and faster procedures with fully automation is required and implemented.

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THANK YOU