



THAILAND INSOLVENCY AND SECURED TRANSACTION REFORM

**At the Session 6: The Intersection of Insolvency
and Secured Transaction Regimes**

**On April 5, 2016
Kuala Lumpur, Malaysia**

Ruenvadee Suwanmongkol, DG, the LED, Thailand



AGENDA

**1. Insolvency and Secured Transaction Act –
Key Features of the Reform**

**2. The Link of Insolvency and Secured
Transaction Act – The Design of the Reform**

**3. Role of the Legal Execution Department (LED)
of both Insolvency and Secured Transaction
Reform**



Key Features Reform



The Government's State Policies:

- **Revision of laws** is a major issue. Major laws will be revised to be more up to date, and to accommodate national competitiveness.



The LED's Legal Reform

Since August 2014, the Legal Execution Department (the LED), Ministry of Justice, has emphasized on developing and revising related laws under the LED's responsibilities. The LED has been continuously improving the insolvency law to meet international standards, UNCITRAL, ROSC, and the best practices.



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

EASIER
ANYWHERE
BETTER

(Start August 2014)



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.



Quick actions

Since Nov. 2014



**Innovative, proactive,
and participatory
approach**

Propose 6 legal reforms

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

**Year
2015**

Accomplishment

LAW REFORM

**Bankruptcy Act
No. 8, 2015 came
into effect on
27 August 2015**

**Ministerial Decree on
Registration &
Qualifications of Planner &
Plan Administrator No. 2**

**Ministerial Regulation on
Qualifications of Official
Receivers Eligible to Issue
Orders of Proof of Claim**

**Year
2016**

Accomplishment

LAW REFORM

**Bankruptcy Act,
2016 – the
Business
Reorganization of
the SMEs**

**the National
Legislative
Assembly already
approved on
24 April, 2016**



**New concept proposed: “Inability to pay” and
Individual can voluntarily request of a reorganization.**

**Year
2016**

In the Process

LAW REFORM

**Draft
Bankruptcy
Act (No...)**

**at the Working
Group of the
LED**



**Key issues: UNCITRAL Model Law,
Adoption of “Inability to Pay” and some issues
related to the Business Collateral Act**



Key Features Reform Bankruptcy Act

BACKGROUND: Bankruptcy Act No. 8, 2015

- **The LED had proposed the Draft Insolvency Act in late 2014 and the Cabinet approved the Draft on January 6, 2015.**
- **The National Legislative Assembly approved the Act on 28 May 2016**
- **Insolvency Act No. 8, 2016 became effective on 27 August 2016.**



Key Features Reform Bankruptcy Act

1. Streamline the Process

2. More Clarity and Certainty – Composition of Debts

3. More Flexibility for the Timeline of Filing Debt Repayment Claim

4. Increase of the Amount of Penalty (Fine)



Key Features Reform Bankruptcy Act

Key Features - 4 major issues as follows:

1. Streamline the process – the Act, for the first time, empowers an Official Receiver of the LED, not the Court like in the past, to examine claims for repayment of debts. Also, an Official Receiver of the LED is empowered to review disputed claims of debt repayment and issue orders to dismiss or approve such claims. This amendment aims to speed up the process and minimize related step.



Key Features Reform Bankruptcy Act

Key Features:

2. More Clarity and Certainty – the Act, for the first time, identifies contents of the composition prior to bankruptcy. The proposal of composition of debts shall compose of the statements of composition, method of business or asset management, details of collateral, or guarantor (s), if any.



Key Features Reform Bankruptcy Act

The proposal for composition of the debts shall contain at least the following matters;

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



Key Features Reform Bankruptcy Act

Key Features:

3. Timeline for a Debt Repayment Claim - To grant a creditor, who has not filed claim for repayment of the debt within the time period due to the inevitable event, *force majeure*, the right to file such claim for repayment of the debt in order to create fairness and more flexibility.



Key Features Reform Bankruptcy Act

Key Features:

4. Increase the Amount of Penalty (Fine) –

To amend the Penalty Provision relating to fines in accordance with the current economic and social situation since they had not been revised since the enactment of the Bankruptcy Act in 1940.



Key Features Reform Bankruptcy Act

BACKGROUND: Bankruptcy Act (Business
Reorganization for SMEs**)
No. 9, 2016**

- **The LED had proposed the Draft Insolvency Act in 1st Quarter of 2015 and the Cabinet approved the Draft on 30 June 2015.**
- **The National Legislative Assembly approved the Act on 24 April 2016.**



Key Features Reform Bankruptcy Act

Key Features: Help the SMEs, for the first time, to resolve the financial distress by submitting a business reorganization plan, like a big company.

- 1. The Cash-Flow Test Base or the Concept of “Inability to Pay”**
- 2. Simplify and Expedite the Process**
- 3. Eligible Debtors**
- 4. Nature and Value of Debts**
- 5. Promote the Good-Faith**



Key Features Reform Bankruptcy Act

Key Features: Help the SMEs, for the first time, to resolve the financial distress by submitting a business reorganization plan, like a big company.

1. The Cash-Flow Test Base or the Concept of “Inability to Pay” – the first time ever for the Thailand insolvency regime to adopt “cash-flow” test base to enhance SMEs debtors’ ability of a quick recovery.



Key Features Reform Bankruptcy Act

Key Features:

2. Simplify and Expedite the process – to facilitate the business reorganization plan for the SMEs, the Act allows the “**Pre-Package**” plan, on which the creditors and debtors mutually agree upon before the commencement of the insolvency procedures. This principle simplifies and expedites the processes for SMEs and saves costs as the debtor plans and administers (debtor in proceession) the plan by itself for the period of 3 years.



Key Features Reform Bankruptcy Act

Key Features:

3. Eligible Debtors – SME debtor who is an individual person or a juristic person, i.e., a group of persons, a registered or unregistered partnership, a limited partnership, and a company. SME debtor must engage in the small-and-medium-scaled business and register with the Office of SMEs Promotion (OSMEP) or other official offices.



Key Features Reform Bankruptcy Act

Key Features:

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

5. Promote the Good-faith – the Act promotes and scrutinizes debtor's good faith in disclosure of asset information.



Key Features Reform Secured Transaction Act (Business Collateral Act)

BACKGROUND: The Business Collateral Act proposed by the Ministry of Finance was enacted on 5 November 2015 and will be effective on 2 July 2016. This Act had been initiated since 1998.

KEY OBJECTIVE: Help businesses, especially SMEs to get access to credit which will, then, benefit the country's social and economic development and competitiveness.



Key Features Reform Secured Transaction Act

KEY FEATURES:

1. The borrower will retain the right to possess the collateral and to put the collateral to commercial use for the duration of the secured period, unless otherwise agreed by the parties
2. The written agreement evidencing the secured transaction must be registered with the Business Collateral Registration Office at the Department of Business Development, Ministry of Commerce.



Key Features Reform Secured Transaction Act

KEY FEATURES:

3. Security provider (debtor) can be any natural person or juristic person, whereas security recipient (creditor) must be a financial institution or other person as specified by the Ministerial Regulation.
4. Collateral can be in various forms, i.e., business, claim, account receivable, raw material, movable property, immovable property only for the security provider operates a real estate business, and intellectual property.
5. If a business is used as collateral, the parties shall agree on the selection of the security enforcer.



Key Features Reform Secured Transaction Act

KEY FEATURES:

6. Every types of the collateral is only perfected by registration.
7. Priority depends on the date of registration.
8. Upon default, the security recipient (creditor), with the security provider's consent, can enforce the collateral by himself. The Act introduces, the so-called “out-of-court enforcement.”



The Design of the Reform

The Link btw the Two

Enforcement* - EODB

1. Priority rules outside/inside bankruptcy
 2. Secured creditors protection during reorganization or bankruptcy procedure
 3. Out of court enforcement
- Referred to the Presentation made by Ms. Maika Chiquier, Private Sector Development Specialist, the WB/IFC, 27 January 2016, Seoul Korea



The Design of the Reform

The Link btw the Two

The reforms of those two act need to be considered consistently due to their interaction.

Upon registration, the security recipient (creditor) shall be deemed a secured creditor under the insolvency law.

Rights regulated by a secured transactions law are affected by the commencement of insolvency proceedings. Then, the insolvency law needs to address those effects.



The Design of the Reform

The Link btw the Two

UNCITRAL Legislative Guide on Secured Transactions and UNCITRAL Insolvency Guide and WB Principles

The insolvency law should include appropriate protections for the secured creditor taking into consideration the “**Priority**”.

The insolvency law must contains clear rules as to the effect of insolvency proceedings on the rights of a secured creditor, so as to enable secured creditor to quantify the risks.



The Design of the Reform

The Link btw the Two

The LED is now considering to revise of the Bankruptcy Act, among others, with due consideration of the business collateral system.

Need to look into various stage: pre-insolvency commencement, upon the commencement of a formal insolvency proceeding, and post-insolvency commencement, e.g., the effect of automatic termination clause, the third-party effectiveness of a security right in insolvency proceedings, or assets acquired after commencement of insolvency proceedings (asset in the future can be under the business security contract).



The Role 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



The Role of the LED

- Standardize and improve the practices nationwide – 115 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



The Role of the LED Impacts both Laws

Bankruptcy Act – as an “Official Receiver”

Business Collateral Act –

1. enforcing the collateral upon the court's order
2. being an interim security enforcer to seize and pass the business collateral to the security enforcer



The Role of the LED Impacts both Laws

Civil Procedure Code – as an
“Civil Enforcement Officer” –
“priority” shall be ranked according
to the date and time of the
registration.



The Role of the LED Impacts both Laws

The LED is working with the Business Development Department, Ministry of Commerce to

1. link the data base of the registration of the business security contract.
2. become working group members of setting up licensee qualification as a security enforcer and rules and procedures for examination of facts for a ground to enforce.



Q & A



Thank You

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