

Thailand: SMEs may enter business rehabilitation

A recent amendment to the Bankruptcy Act B.E. 2483 (1940) (the "**Amendment**") allows SMEs to enter into business rehabilitation which is faster than the normal rehabilitation process. A new section has been added to the Bankruptcy Act specifically for SME debtors to avoid SMEs being liquidated as a result of a temporary lack of financial liquidity. This briefing provides an outline of the conditions and criteria under the Amendment.

Definition of Debtor

This Amendment states that the following types of debtor can enter into the business rehabilitation process:

- an individual
- a private limited company
- a limited partnership
- a registered partnership
- a non-registered partnership
- a group of persons or
- any other juristic person specified in the Ministerial Regulation, (the "**Debtor**").

Conditions

A Debtor who is allowed to be placed under business rehabilitation according to this Amendment must meet the following conditions:

- Conduct an SME business in accordance with the laws in relation to the promotion of SME businesses; and
- Be registered with the Office of SMEs Promotions or another government agency in order to conduct such business.

A petition for business rehabilitation may be filed with the court in a case where the Debtor:

- is insolvent; and
- owes to at least one or more creditors the following amounts depending upon on the type of Debtor:
 - at least THB 2,000,000 if an individual;
 - at least THB 3,000,000 if a limited partnership, registered partnership, non-registered partnership, group of persons or other juristic person specified in the Ministerial Regulation; or
 - at least THB 3,000,000 but less than THB 10,000,000 if a private limited company.

Criteria for filing a petition

The procedure may be commenced by any creditor or the Debtor. The petition filed with the court is required to include a proposed plan which contains the details as required in the Amendment, and consent of the plan administrator.

Proposed plan

The proposed plan must contain the reason, details of assets and liabilities including principles, procedures and steps for rehabilitation of the business, withdrawal of security, solution for temporary liquidity during the

rehabilitation process, and details of the plan administrator. The proposed plan must be for a period of not more than 3 years and cannot generally be amended or extended. The proposed plan must be approved by creditors holding at least 2/3 of all the debts prior to the filing of the petition to rehabilitate the debtor to the court.

If such period has expired and it is obvious to the court that the proposed plan is nearly complete, the court may extend the period of the proposed plan as appropriate for the plan administrator to proceed with the plan.

Moratorium

Upon the court accepting the petition, an automatic stay will come into effect. The automatic stay will continue until the rehabilitation plan has expired or has been completely implemented, or the rehabilitation process been cancelled or dismissed by the court.

Effectiveness

The Amendment took effect on 25 May 2016.

If you require any further information on any issues raised in this briefing please contact the authors at the details below.

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500986-4-9490-v2.0

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