

Reorganisation proceedings in Thailand – an overview

by

Stephen Frost, Price Sanond

Introduction: Thailand, in common with many countries, now has numerous companies that are insolvent or on the verge of insolvency due to the economic effects of COVID-19. Thai International Airways, the country's national carrier, is now subject to reorganisation proceedings with total debts of US\$10.3 billion. After Thailand's last major financial crisis in 1997, 90 new sections were written into the Bankruptcy Act (1940) to provide for a remedy of corporate reorganisation. The law is very much based on the Chapter 11 of the US Bankruptcy Code.

In this article, we discuss the basic principles of reorganisation proceedings.

Right to issue reorganisation proceedings Reorganisation proceedings may be issued when the debtor becomes insolvent, or unable to pay its debts within the time specified, and owes debts of not less than 10 million Baht, and provided that there are reasonable grounds and prospects for reorganization..

Who may apply to the court? Either the debtor, a creditor, or a regulatory agency that supervises the activities of the debtor, may issue reorganisation proceedings

SME businesses SME businesses (as defined in the Small and Medium Business Promotion Act (2000)), may also issue reorganisation proceedings, provided the person, partnership or company owes a specified minimum level of debt.

Contents and issuing of the application The application must contain certain information including a statement that the debtor is insolvent or the debtor has failed to repay a debt within 30 days after a written demand, or default in payment

The application must be served on all creditors, the Companies Registry, and any appropriate regulatory agency, at least seven days before the hearing. The hearing must be advertised in newspapers. The debtor must file a list of its assets and liabilities at the Court.

Before the hearing, either the debtor or a creditor may file any objection to the application.

Where the debtor is an SME, the application must be accompanied by a draft reorganization plan. This must be approved by creditors who are owed at least two thirds of all debts.

The period for plan preparation can be extended on not more that two occasions.

Protections granted to the debtor Certain very substantial protections are granted to the debtor. These apply from the Court's acceptance of the application, until the expiry of the reorganisation period or the completion of the reorganisation. The protections include: an embargo or the staying

of any legal proceedings against the debtor, prevent the termination of any business licences or the corporate status of the debtor, and prevent the disconnection of utilities.

Protection for creditors A creditor or any person adversely affected as a result of restrictions imposed on his rights to take action, may apply to the Court to vary or revoke any restriction imposed, on certain grounds.

Appointing the planner There are special rules regarding the appointment of the planner.

Suspension of shareholders' rights Prior to the planner's appointment and when the organisation order has been made, all shareholders rights are suspended (except for the right to receive dividends) and become exercisable by the interim administrator or the Official Receiver.

Preparation and consideration of the plan The plan must be sent by the planner to the Official Receiver and all others concerned within three months of the planner's appointment confirmation in the government gazetts. The Official Receiver must then summon a creditors' meeting to consider the plan. A creditor, the debtor or the planner may propose changes to the plan, at least three days before the meeting.

Groups of creditors: Creditors are divided into groups for the purpose of approving the plan, as follows:

1. Each secured creditor whose debt is not less than 15% of the total debts, is classified as one creditor;
2. All other secured creditors are classified as one group;
3. Unsecured creditors are divided into several groups – those with the right to claim or benefit in essentially the same manner are classified in the same group;
4. Deferred creditors form one group.

Approval of the plan Approval of the plan takes place as follows:

(1) a meeting of each and every group of creditors (excluding any group of creditors whose approval is deemed to have been given) has passed a resolution by the majority creditors holding not less than two-thirds of the total debt, attending the meeting in person or by proxy at the meeting of creditors, and voting on the resolution, or

(2) a meeting of at least one group of creditors, (excluding any group of creditors whose approval is deemed to have been given), has passed a resolution by the majority creditors holding not less than two-thirds of the total debt of creditors in that group attending the meeting in person or by proxy and voting on the resolution, and after counting the debts of the creditors approving the plan at the meeting of all groups of creditors, this is not less than 50% of the total debts of creditors attending the meeting in person or by proxy at the meeting of creditors and casting votes on the said resolution.

Creditors who are deemed to have approved the plan, are as follows:

- Creditors who have received a proposal for full payment of their debt with interest within 15 days of court approval of the plan
- Creditors who have received a proposal for repayment under a previous agreement
- Deferred creditors

Court approval of the plan After the creditors' meeting a court hearing must be convened to approve the plan. The Court will approve the plan provided that it does not apply different treatment to creditors in the same group.

Once the plan is approved, the planner's duties pass to the plan administrator. The approved plan is binding on all creditors who were entitled to file proof of debt.

Plan approval does not affect those who hold any liability jointly with the debtor, or any guarantors of the debtor's liabilities.

Creditors who fail to file their claims in time forfeit their right to claim payment, unless (1) it is otherwise stated in the plan; or (2) where the Court sets aside the order for reorganisation.

Creditors rights to claim debts The rights of creditors to claim debts are subject to the following rules:

1. Creditors must submit particulars of debt claimed to the Official Receiver, within one month of the date of the planner's appointment being published in the government gazette.
2. A debt may be claimed, if it arose prior to the order for reorganization.
3. Provision is also made in relation to debts incurred by the Official Receiver or interim administrator, or taxes, duties or other debts incurred from the date the order for reorganisation was made, but before the planner is appointed.
4. Secured creditors may enforce their claims against secured assets without having to submit a claim for repayment, but the Official Receiver or the Planner has a right to inspect the secured assets.
5. A creditor has voting rights based on the amount of the debt owed, provided that the amount of debt which is claimed is not disputed. The Official Receiver will decide disputes concerning voting rights.

Where debts are disputed, the Official Receiver decides the issue, subject to a right of appeal to the court.

Setting aside acts done The planner, plan administrator or the Official Receiver can ask the Court to set aside fraudulent acts (as defined in the Civil and Commercial Code) subject to certain conditions.

Setting aside fraudulent acts The Official Receiver may apply to the Court for cancellation of fraudulent acts (as defined in the Civil and Commercial Code), subject to certain time limits.

Plan administrator's right to disclaim The plan administrator has a right to disclaim the debtor's property or contractual obligations that exceed their benefits, subject to time limits or conditions.

Extension of time for reorganisation Usually the plan must be implemented/completed within five years. If this time has expired without completion of reorganisation, then a Court hearing must be convened. The period may be extended on not more than two occasions, of one year each.

Price Sanond is a general corporate and commercial law firm. For further information email Stephen Frost at: sfrost@pricesanond.com or telephone (66) 2 679 1844.