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Business Reorganization in Thailand: Steps and Procedures

In order to repay debts, many flailing companies allocate additional resources to uncover new sources of income. In turn, these companies incur more debt, and this can lead to a vicious downward spiral ending in bankruptcy.

Despite this bleak outlook, these companies still have the potential to recover and become profitable. One way is through reorganization, which provides relief to debtors that allows them to survive a crisis while ensuring that their creditors receive fair repayment.

To initiate the reorganization process, debtors, creditors, or government agencies can submit a reorganization petition to the Bankruptcy Court.

Once the Bankruptcy Court accepts a reorganization petition, all of the debtor's outstanding debts are automati-

transfer to the planner. In addition, all legal rights of the debtor's shareholders, with the exception of the right to receive dividends, will be vested in the planner.

After the planner is appointed, the official receiver will publish the Bankruptcy Court's reorganization order in the *Government Gazette* and in two widely circulated daily newspapers. All creditors must submit a repayment application with a copy to the official receiver within one month from the publication date. Creditors that are owed debts incurred prior to the Court's issuance of the reorganization order are entitled to submit an application.

Once all applications have been submitted, the debtor, all creditors, and the planner will have the right to review and object to applications which they deem as invalid. The official receiver will evaluate the matter and render a decision as to voting rights in approving the reorganization plan. During this process, the planner is tasked with drafting the reorganization plan, which must include details such as the reasons why the debtor requires reorganization, principles and methods of business reorganization, redemption of collateral if there are secured creditors or liabilities of a guarantor, ways to resolve problems if there is a temporary lack of liquidity during implementation of the plan, and the time period for the plan which must not exceed five years, among other details. In addition, the planner is empowered to refinance, restructure, and hair-cut the debts as he or she deems necessary.

The planner must submit the plan to the official receiver within three months from the publication date of the Court's order appointing the planner. After receiving the plan, the official receiver will hold a creditors' meeting to discuss whether the plan should be accepted in its current form or revised. If a decision is rendered to approve the reorganization plan, a special resolution to that effect must be passed, either: (1) by a majority of the creditors owed three-fourths of the total debts of creditors present at the creditors' meeting; or (2) by at least one group of creditors who are not already presumed to have approved the plan, provided that the total debt owed to the creditor group represents at least 50 percent of

the total debt owed to the creditors present at the creditors' meeting.

Regardless of whether a resolution accepting the plan is passed, the official receiver will report the outcome of the creditors' meeting to the Court. If a resolution accepting the plan is passed and the Court determines that the resolution is not illegal and agrees with the outcome, it will issue an order approving the plan. Once the Court approves the plan, the rights and duties of the planner will immediately transfer to the plan administrator. Not only will the plan administrator have the right to manage the debtor's business under the plan, but in some cases, it will have additional rights not previously available to the planner.

Once the reorganization plan has been operational for some time and proves to be successful, the debtor's executives, plan administrator, or the official receiver are entitled to report the successful outcome to the Bankruptcy Court and request for termination of the business reorganization. If the Court agrees, it may cancel the business reorganization order, at which point the debtor's directors and authorized director will regain their full rights to manage the business operations and assets of the debtor, unless the plan had altered these rights. Shareholders of the business will also regain their legal rights. This is the point which flailing companies in reorganization hope to attain, and this is the main reason to engage in the reorganization process. 🍷

Who can submit reorganization petitions?

- ✓ **Debtors** qualifying under one or more of the following conditions:
 - The debtor is insolvent and indebted to one or more creditors for an amount not less than THB 10 million, regardless of whether the debt is due or not.
 - There are sufficient grounds to believe that the debtor's business can be successfully reorganized.
 - The petitioner is honest in submitting the petition.
- ✓ A single **creditor** or group of creditors owed not less than THB 10 million.
- ✓ **Government agencies** (e.g., the Bank of Thailand, Department of Insurance, and Office of the Securities and Exchange Commission).

cally stayed or "frozen." The automatic stay ensures that the debtor will be protected by the Bankruptcy Act, which shields the debtor from creditors' debt collection efforts.

During an automatic stay, a debtor is obligated not to dispose of, distribute, transfer, pay debt, create debt, or act in any way which may encumber its property, except those necessary for conducting its ordinary business or as otherwise provided by court order.

In the trial phase, the Bankruptcy Court will review all documentary evidence and hear all witnesses. If the Court agrees with the petitioner, it will allow the debtor to reorganize. If it disagrees with the petitioner, the Court will dismiss the case. The petitioner can submit an appeal to the Supreme Court and request a review of the Court's decision.

Once the Court approves the debtor's petition to reorganize, it will appoint a planner with the duty to prepare and submit a business reorganization plan for the debtor and operate the debtor's business. This is usually someone nominated by the petitioner. If there are objections from any creditor or debtor as to the identity of the planner, the official receiver—by court order—will hold a creditors' meeting to elect a suitable planner.

At the creditors' meeting, the planner will be approved by the creditors that are owed no less than two-thirds of the total debts, failing which the person proposed by the debtor will be chosen as the planner. Once the planner is appointed, the rights and duties of the debtor will immediately