

PROPOSED AMENDMENT TO THE BANKRUPTCY ACT

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The Thai Bankruptcy Act, amended in 1998 and 1999, created a system under which a financially distressed company can avoid liquidation by engaging in business rehabilitation. The law provides for the maintaining of the debtor's assets--allowing the company time to reorganize -- while at the same time guaranteeing protection of the creditor's interests.

A proposed amendment to the Bankruptcy Act, currently under consideration, seeks to increase fairness for all parties concerned. The two sides of this balancing effort, between the rights of creditors and debtors, are embodied in two particular provisions of the proposed amendment. The first provision increases the proportion of creditors needed to bring into force a rehabilitation plan, and the second provision eliminates the discharging of debts for debtors who have acted dishonestly in failing to repay creditors.

The former proposed amendment tips the balance in favor of the struggling debtor, while the latter focuses on the creditor's right to protection from debtors acting in bad faith. While both provisions are important contributions, it will be the restrictions placed upon dishonest debtors that will serve to greatly enhance the credibility of the Act.

Before the amendment in 1999, an individual who declared bankruptcy under the Act could only resume conducting business, cleared of insolvency status, after 10 years. The 1999 amendment cut this waiting time to 3 years in an effort to speed up the restructuring process. However, the current proposed amendment would extend this bankruptcy period upon discovery that the debtor intentionally failed to comply with its debt obligations. Therefore, even after the 3-year period has ended, the proposed amendment allows foreclosure proceedings to be enacted against a debtor that has illegally hidden assets.

Implementation of such a measure, targeting dishonest debtors, would greatly increase the confidence of Thailand's creditors and investors, while putting debtors on notice that the Act is guarding against loopholes. The resulting amended bankruptcy law--trusted for its fairness--cannot but help to have a positive impact on the economy.