

## **SPECIALIZED BANKRUPTCY COURT: THAI PERSPECTIVE**

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This paper intends to briefly explain key reasons why Thailand has established the specialized bankruptcy court and the current progress of the initiative. It also tries to indicate advantages and drawbacks of the approach.

### **Economic crisis and the changes**

Every country that faced the economic crisis in 1997 had to find its own way to tackle the very large clouds of bad debts and the high level of non-performing loans. Thailand chose to alleviate such the problem by basing its policy on market approach. The government decided to strengthen the existing organizations and mechanisms dealing with judgment enforcement and bankruptcy proceedings mainly. Many laws including the Civil Procedure Code have been amended. It was no doubt that the bankruptcy law was largely changed. In 1998-1999, the Bankruptcy Act had to be amended twice and in 1999 the Bankruptcy Court was then established to increase the efficiency of the implementation of bankruptcy law. The Bankruptcy Amendment in 1998 added provisions for business reorganization to the old Act that only had the liquidation process, whereas the Amendment in 1999 intended to reduce the bankruptcies among individuals.

The most important piece of legislation in terms of the real implementation is the Establishment of Bankruptcy Court and the Procedure for Bankruptcy Cases Act 1999. The Central Bankruptcy Court was inaugurated on 18 June 1999. The Court has jurisdiction over all bankruptcy filings and also all the civil cases pertaining to the same. The term bankruptcy case covers all liquidation and reorganization cases. After the establishment of the court, all bankruptcy cases must be heard by the judges of bankruptcy court and no one can as of right file the bankruptcy petition with other courts.

This is the great important change concerning the bankruptcy system in Thailand. For a very long time, bankruptcy cases fall within the jurisdiction of a civil court and other courts having civil jurisdiction. Cases in Bangkok were heard in the Civil Court but cases in the provinces were heard in provincial courts, which have jurisdiction over civil and criminal matter. One major concern in the parliament during the consideration of the rehabilitation procedure is the competency of judges hearing bankruptcy issues. It is accepted that with the new role of judges on supervising rehabilitation process, judges in this field must be specialized. They must have some experience of business practice and a competent knowledge of the same.

### **Specialized Courts in Thailand**

The Central Bankruptcy Court is by no mean the first specialized court in Thailand. There are various specialized courts established long before the one such as the Central Tax Court and the Central Intellectual Property and International Trade Court. The reason behind such the move is that those particular types of cases require specific experience and expertise of judges. This is of course debatable, but since the approach was well accepted in the country, the thought played an important role for the government to enhance the court system by way of establishing more specialized courts.

In fact, the intention to establish the bankruptcy court was somewhat not peculiar among justice ministry's staff and it can be traced back for many years, but somehow it was never deliverable until the crisis. To be honest, the bankruptcy court would not be a good choice without the reorganization proceedings added to the Bankruptcy Act. The reorganization law gives a rather important role to judges in dealing with business enterprise and is deemed to be quite complicated. Recommendations were put by various sectors including the Senate and Banking Sector that judges who would effectively applying the law had to be the ones with clear understanding of the process and also possess suitable knowledge of business practice. Some reorganization cases were filed with various courts, before the Central Bankruptcy Court was established, but most of them

ended in failure. Many blamed the judges sitting on those cases. None of the cases filed with provincial courts actually came through.

It was suggested that one way to tackle the problem is to provide urgent training for judges. However, it was considered to be very impractical for the Ministry of Justice to train all the judges for a short period of time since there were more than 2,000 judges all over the country at the time. It was also considered that budget would not be used wisely for the training since many of them would never have an opportunity to hear that type of cases. At the end, the setting up of specialize bankruptcy court emerged as the best option of all.

### **Reasons**

1. Once the judges hearing bankruptcy can be placed in one court, training will then be able to be done economically and sensibly.
2. With the more chance of working on bankruptcy cases, the judges will undoubtedly gain more experience over times.
3. With the more centralized approach, many issues will be decided swiftly by the same group of judges. This will enhance the predictability of the court and the law.
4. There is no risk of attempting to do the new thing for setting the specialized bankruptcy court here since there are good examples set by other specialized courts in Thailand.

### **Confidence**

The Central bankruptcy court really shows its ability and improves the confidence concerning the system. The number of reorganization cases improves from only 15 cases in 1998, 22 cases in 1999 and to 135 cases in 2000. More than 50 plans have been approved and confirmed.

The Bankruptcy court has played a great role in dealing with rehabilitation and liquidation cases. Statistics show that it takes much less time to decide on the case comparing with the old system. Further, the number of rehabilitation cases is growing rapidly.

### **Drawbacks**

It should be noted that specialized court might not be suitable for other countries. Setting up such the court in some environment may have an adverse effect.

1. Setting up specialized court requires sufficient number of cases. Without certain number of cases to be heard, the court will not be able to run efficiently.
2. Judges normally require having expertise and knowledge of other cases apart from bankruptcy. The situation may get worse if under the system judges will have to be transferred from one court to another in order to gain promotion.
3. Specialized court in the level of the court of first instance will eventually force the appellate court to have the specialized bench for the cases as well. To set up a specialized bench in the Supreme Court is very difficult due to the small number of justices.
4. Without specialized bench in the appellate court, the standard of judges between the court of first instance and the appellate court may be wide.

Thailand does not have clear drawbacks as stated. This is because it has a sufficient number of bankruptcy cases and it also sets up specialized bench in the Supreme Court.