

Bankruptcy Act (No. 7), B.E. 2547 (2004)

Translation

Given on 2nd day of June B.E. 2547 (2004)

Being the 59th Year of the Present Reign

His Majesty King Bhumibhol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to revise the Bankruptcy Act;

This Act contains certain provisions concerning the restriction of personal rights and freedoms, which, under Section 29, together with Section 36, Section 37, Section 48, and Section 50 of the Constitution of the Kingdom of Thailand, can be done by virtue of the provisions of law.

Be it, therefore, enacted by His Majesty the King, by and with the advise and consent of the National Assembly, as follows:

Section 1

This Act shall be called the "Bankruptcy Act (No. 7), B.E. 2547 (2004)"

Section 2

This Act shall come into force after the day following its publication in the Government Gazette.

Section 3

Section 35 of the Bankruptcy Act (No. 5), B.E. 2542 (1999) shall be repealed.

Section 4

The definition of "Insider of the debtor" under (3) of Section 6 of the Bankruptcy Act, B.E. 2483 (1940) as amended by the Bankruptcy Act (No. 5), B.E. 2542 (1999) shall be repealed and replaced by the following:

"(3) The spouse and minor children of the debtors or the persons under (1) or (2)"

Section 5

The definition of "Dishonest Bankrupt" of Section 6 of the Bankruptcy Act B.E. 2483 (A. D. 1940) shall be repealed and replaced by the following:

" "Dishonest Bankrupt" means a bankrupt who has been adjudged by a Court to have offended against the provisions of Sections 163 through 170 of this Act, or who is a bankrupt in connection to or in relation to committing an offence on misappropriation or cheating within the meaning of the Penal Code or an offence on fraudulent borrowings from the public under the Fraudulent Borrowings Act".

Section 6

Section 21 of the Bankruptcy Act, B.E. 2483 (1940) shall be repealed and replaced by the following:

"Section 21

On the application of the Official Receiver, the Court is empowered to order an agent or an operator doing business relating to post, telegraph or other communications services to send to the Official Receiver telegrams, postal mail, letters, electronic data or other communication data having been addressed to the debtor by mailing them within a period not exceeding six months from the date of the debtor being ordered to be under receivership."

Section 7

The followings shall be added to Section 67/1 of Part 10 "Discharge from Bankruptcy" in Chapter 1: The proceedings from the time of application of bankruptcy through discharge from the bankruptcy of the Bankruptcy Act, B.E. 2483 (1940):

"Section 67/1

After the Court has adjudged a person to be bankrupt, the bankrupt may be discharged from bankruptcy when the Court gives a discharge order in accordance with Section 71 or after the lapse of time prescribed in Section 81/1."

Section 8

Section 71 of the Bankruptcy Act, B.E. 2483 (1940) shall be repealed and replaced by the following:

"Section 71

The Court shall give an order granting a discharge from bankruptcy on the following:

- (1) at least not less than 50% of the debtor's assets have been distributed to the creditors submitting for a claim of such repayment; and
- (2) not being a dishonest bankrupt

The Court may prescribe any terms or conditions relating to the assets to be possessed in the future in the Court's order under paragraph 1. However such order shall not be issued if exceeding the period of time the person being discharged as prescribed in Section 81/1."

Section 9

Sections 72, 73, 74 and 75 of the Bankruptcy Act, B.E. 2483 (1940) shall be repealed.

Section 10

The followings shall be added to Sections 81/1, 81/2, 81/3 and 81/4 of the Bankruptcy Act, B.E. 2483 (1940):

"Section 81/1

Subject to Section 81/2 a natural person who is adjudged to be bankrupt shall be immediately discharged from bankruptcy after the lapse of 3 years from the date of adjudication by the Court, except:

- (1) Such a person has been previously adjudged bankrupt and is within the period of 5 years from the Court's previous adjudication through the last receivership ordered by the Court, such a period shall be extended to 5 years;
- (2) Such a person is a dishonest bankrupt not falling under (3) such a period shall be extended to 10 years, except when there are special reasons and such a person has been adjudged to be bankrupt for a period of not less than 5 years. In this case the Court may order a discharge from bankruptcy prior to the due 10-year period in accordance with the application filed by the Official Receiver or such a bankrupt person;
- (3) Such a person is a bankrupt in connection to or in relation to committing an offence on misappropriation or cheating on borrowings from the public under the Fraudulent Borrowings Act, such a period shall be extended to 10 years.

In the case of having more than one ground under (1), (2) or (3), the ground having the maximum time shall solely be applied.

Sections 76, 77, and 78 shall be applied mutatis mutandis to the discharge from bankruptcy under this Section.

Section 81/2

Prior to the expiry of the 3 year period under Section 81/1 paragraph 1, the Official Receiver may file an application with the Court requesting the Court to order a suspension of counting such period.

After the Court has received such an application, the Court shall urgently schedule a preliminary examination and send a copy of the application to the bankrupt not less than 7 days prior to the scheduled examination date.

Section 81/3

After the Court has examined the application under Section 81/2, if the Court deems that the bankrupt did not give cooperation to the Official Receiver in collecting assets without having appropriate grounds, the Court shall order a suspension of counting the period of time in accordance with Section 81/1 from the date the Official Receiver has filed the application or the date of the Court's order until a period prescribed by the Court with or without conditions imposed thereon.

The suspension of counting the period under paragraph 1, regardless of the numbers of suspensions granted by order of the Court, shall not exceed 2 years when the time period is all added up. In any event, the Court shall in no way order the suspended counting of time period under Section 81/1 (2) or (3) or give an order after the expiration of the 3-year term under Section 81/1 paragraph 1.

The Court's order under this Section shall be final.

Section 81/4

After the Court has ordered in accordance with 81/3, if the situation has changed, the bankrupt may file an application with the Court requesting a cancellation or amendment of such order.

After such application is received, the Court shall schedule a preliminary examination and send a copy of the application to the Official Receiver in order to notify the creditors in advance of not less than 7 days.

The Court may order a cancellation or amendment of its order under Section 81/3.

The Court's order under this Section shall be final."

Section 11

Part 12 "Appeals" in Chapter 3/1 regarding the proceedings relating to reorganization of debtors' business and Section 90/79 of the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 5), B.E. 2542 (1999) shall be repealed.

Section 12

Section 179 of the Bankruptcy, Act B.E. 2483 (1940), as amended by the Bankruptcy Act, (No. 2) B.E. 2511 (1968) shall be repealed and replaced by the following:

"Section 179

Fees in a bankruptcy action shall be calculated at the following rates:

- (1) On filing an action in Court: for a plaint or petition asking for an adjudication of bankruptcy, Baht 500;
- (2) For filing a claim for payment of debt in a bankruptcy action, Baht 200, except it is an application of a judgment creditor or a creditor filing a claim to receive a debt repayment of not exceeding Baht 50,000;
- (3) Court fee in case of appeals: for a claim to receive a debt repayment, Baht 200; and

- (4) The fee for collecting the asset shall be calculated at the rate of three percent of the net value of asset collected. For asset being not sold or disposed of, the rate shall be two percent of the value of that asset.

However if there is a composition of debts, the rate shall be three percent of the value of the composition; whichever sum is higher.

All other fees shall be calculated at the same rates as is prescribed in the Civil Procedure Code."

Section 13

A natural person who has been adjudged bankrupt prior to the effective date of this Act and falling within the period of time prescribed in Section 81/1 of the Bankruptcy, Act B.E. 2483 (1940) as amended by this Act on or before the effective date of this Act shall be discharged from bankruptcy.

A person adjudged bankrupt prior to the effective date of this Act, and is not discharged from bankruptcy under paragraph 1, he shall be discharged from being a bankrupt under the Bankruptcy Act, B.E. 2483 (1940) as amended by this Act by counting the period of time from the day of adjudication of the Court.

Section 14

The provisions in Section 12 of this Act shall not apply to the bankruptcy cases filed prior to the enforcement of this Act. Section 179 of the Bankruptcy Act, B.E. 2483 (1940) which is enforceable on the date of filing suit shall be enforceable to such cases.

Section 15

The Chief Justice and the Minister of Justice shall be in charge of this Act.

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