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Instruments to Facilitate Doing Business

Submitted by: Thailand



**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises
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Instruments to Facilitate Doing Business

Thai Business Laws Reforms – Recent Developments
in Security Interests and Insolvency Regimes

Legal Execution Department, Ministry of Justice of Thailand



AGENDA

**1. Introduction to the reforms – promoting SMEs
and investment environment**

**2. Implementation of Secured Transactions –
boosting finance and maximizing value to business**

**3. Allowance Small-and-Medium Sized Business
into Reorganization – helping business' difficulty**



1. Introduction to the reforms



The Government's State Policies:

- **Revision of laws** is a critical issue.
 - Modernizing legal framework to enhance the nation's economy competitiveness.



1. Introduction to the reforms



SMEs' role in the economy

- **99.6%** of entire business
(2,765,986 businesses)
- **80.44%** of employment rate
(10,749,735 employees)
- **41.1%** of GDP
(5.55 trillion Baht)
- **27.40%** of export
(1.98 trillion Baht)



1. Introduction to the reforms

The LED's Legal Reform

Since August 2014, the Legal Execution Department (LED), Ministry of Justice, has emphasized on developing and revising related laws under the LED's responsibilities.

- The LED has been continuously improving the insolvency law to meet international standards, UNCITRAL, ICR-ROSC, and the best practices.

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Thailand is one of the best investment countries having laws with int'l standards


EASIER
ANYWHERE
BETTER

15/01/59


(Start August 2014)

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 **Implementation of Secured Transactions**
Boosting finance and maximizing value to business



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 **Key Features Reform**
Secured Transaction Act
(Business Collateral Act)

BACKGROUND: The Business Collateral Act proposed by the Ministry of Finance, enacted on 5 November 2015, and fully enforce on 2 July 2016. This Act had been initiated since 1998.

KEY OBJECTIVE: Help businesses, especially SMEs to easily get access to credit leading to benefits of the country's social and economic development and competitiveness.



Key Features Reform Secured Transaction Act

KEY FEATURES:

1. The grantor **remains in possession** and utilize such collateral as ordinary use for the duration of the secured period, unless otherwise agreed by the parties
2. **The agreement, to be perfected, must be submitted** to the Business Collateral Registration Office at the Department of Business Development, Ministry of Commerce.

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Key Features Reform Secured Transaction Act

KEY FEATURES:

3. **Debtors** can be either **individuals** or **juristic persons**, whereas **creditors**, at first stage of implementation, can only be **financial institutions** or other persons specified by the Ministerial Regulation.
4. **Collateral can be in various forms**, i.e., business, claim, account receivable, raw material, movable property, immovable property only for the security provider operates a real estate business, and intellectual property.
5. If a **business** is used **as collateral**, the parties shall agree on the selection of the **security enforcer**.

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Key Features Reform Secured Transaction Act

KEY FEATURES:

6. Every types of the collateral is only **perfected by registration.**
7. **Priority** depends on the **date of registration.**
8. Upon default, the security recipient (**creditor**), with the security provider's consent, **can enforce the collateral by himself.** The Act introduces, the so-called "out-of-court enforcement."



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Allowance SMEs into Reorganization – helping business' difficulty



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	<p>Accomplishment</p> <p>LAW REFORM</p>
<p>Bankruptcy Act No. 9, 2016 – the Business Reorganization of the SMEs</p>	<p>Came into effect on 25 May 2016</p> 
<p>New concept proposed: "Inability to pay" and Individual can voluntarily request for reorganization.</p>	

	<p>Key Features Reform <u>Bankruptcy Act</u></p>
<p>BACKGROUND: Bankruptcy Act (Business Reorganization for SMEs) No. 9, 2016</p>	
<ul style="list-style-type: none"> • The LED proposed the Draft Bankruptcy Act in 1st Quarter of 2015 and the Cabinet approved the Draft on 30 June 2015. • The National Legislative Assembly approved the Act on 24 April 2016. • Bankruptcy Act No. 9, 2016 became effective on 25 May 2015. 	
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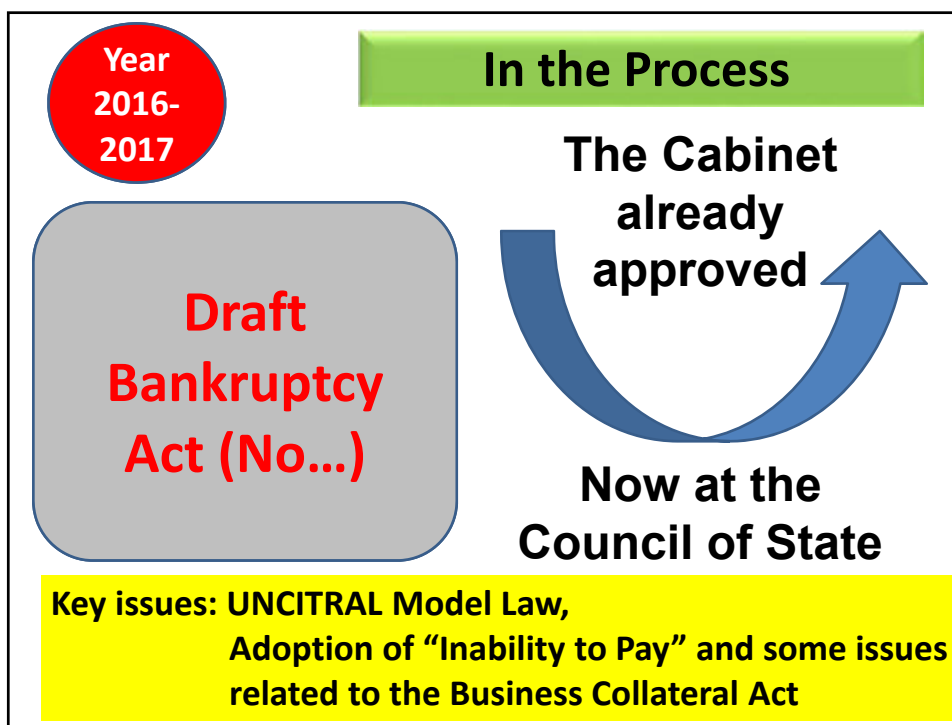


Key Features Reform Bankruptcy Act

Key Features: Help the SMEs, for the first time, to resolve the financial distress to be able to submit a business reorganization plan, like a big company.

1. **The Cash-Flow Test Base or the Concept of “Inability to Pay”**
2. **Simplify and Expedite the Process**
3. **Eligible Debtors – including individuals**
4. **Nature and Value of Debts**
5. **Promote Good-Faith**

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The Design of the Reform The Link btw the Two

Enforcement* - EODB

1. Priority rules outside/inside bankruptcy
2. Secured creditors protection during reorganization or bankruptcy procedure
3. Out of court enforcement

- Referred to the Presentation made by Ms. Maika Chiquier, Private Sector Development Specialist, the WB/IFC, 27 January 2016, Seoul Korea

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The Design of the Reform The Link btw the Two

UNCITRAL Legislative Guide on Secured Transactions and UNCITRAL Insolvency Guide and WB Principles

The insolvency law should include appropriate protections for the secured creditor taking into consideration the “**Priority**”.

The insolvency law must contains clear rules as to the effect of insolvency proceedings on the rights of a secured creditor, so as to enable secured creditor to quantify the risks.

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