



## **ASIAN INSOLVENCY SYSTEMS: THE THAI PERSPECTIVE**

*by Pairoj Vongvipanond*

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## ASIAN INSOLVENCY SYSTEMS: THE THAI PERSPECTIVE

*by Pairoj Vongvipanond\**

### **1) Perspectives on progress and changes in financial and business restructuring in Thailand**

Like all countries hit by the 1997 economic crisis, there is a positive correlation between the amount of debt being restructured and economic and industrial recovery. This correlation also extends to differences in the magnitude of economic recoveries among Asian countries. The first three to four years after the 1997 crisis tended to show that countries such as Korea, and Malaysia, which substantially reduced NPLs or had less initial NPLs, experienced greater corporate debt restructuring than Thailand or Indonesia, which also registered higher growth during this period.

However, one must be careful in making generalisations. In the Thai case, recovery seemed slow initially, possibly because of a delayed effect of corporate restructuring on Thai economic growth. However, over the longer time horizon from 1998-2004, Thai economic growth fared well after 2001 and, overall, did not perform worse than Korea or Malaysia, which are often cited as countries where government intervened more heavily by setting up centralised AMC's. Noteworthy is the fact that, in contrast to Korea, Thailand never experienced court-based corporate reorganisation until 1999. Thailand's NPL at their peak at year end 1999, were several times higher than those of Korea (see table below). Thailand's NPL at their peak were 47.7% of loans in May 1999, two years after the crisis, whereas they were about 15 % in Korea. Unlike Korea and Malaysia, where most NPLs from banks were transferred to centralised AMC's (KAMCO and Danardhatter) from the beginning, in Thailand about two-thirds of NPLs from banks had already been restructured by the end of 2000 and were being restructured by the banks themselves.

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The Thai case was a market-based decentralised approach to financial restructuring. The substantial debt restructuring which took place paved the way for economic recovery after 2002 during the Thaksin government . By the end of 2001, the centralised Thai Asset Management Corporation (TAMC) only handled a small number of NPLs. Over a longer time frame there does not seem to be a significant difference in economic growth in Korea, Malaysia or Thailand despite the different methods of financial restructuring and the different roles of government.

**Table 1: Comparative economic growth (in percent)**

	1998	1999	2000	2001	2002	2003	2004	Avg.
<b>Korea</b>	-6.7	10.9	8.8	3.8	7.0	3.1	4.6	6.4
<b>Malaysia</b>	-7.4	5.8	8.5	0.3	4.1	5.3	2.1	5.18
<b>Thailand</b>	-10.8	4.2	4.3	2.2	5.3	6.9	6.1	4.8
<b>Indonesia</b>	-13.1	0.8	4.8	3.8	4.3	5.0	5.1	3.9

**Table 2: Korea and Thailand's NPLs as a percentage of loans**

	Dec. 1998	Dec. 1999	2000	2001	2004	2005
<b>Thailand</b>	45	38.9	17.9	12.5	10.7	9.93
<b>Korea</b>	17.7	14.9	10.4	5.06	-	-

One of the salient features of Thailand's corporate restructuring is that the financial side of restructuring is more significant than the business side. Mergers and acquisitions, and company consolidations did not take place on a large scale as experienced in the US. The crisis had reduced the number of firms in many industries and caused consolidation. Foreign ownership increased in some sectors. But most Thai family firms (80% of court cases), managed to work with creditors and earn another opportunity to run their previously insolvent firms despite a loss of ownership share. NPLs used to constitute almost 50 % of loans or GDP. Almost half of financial institution NPLs were restructured through the CDRAC co-ordination channel. The firms that went through CDRAC were mostly solvent based on a balance

sheet test, but unable to pay debt. Thirty percent of the rest was being restructured through the bankruptcy court which handled a large number of medium and large-sized insolvent firms based on the balance sheet test. All in all, and in spite of moving too slow in the first two years, Thailand, along with other Asian countries managed to move its economy forward over the longer term. Most firms that survived regained their former strength and competitiveness. The turnaround in listed company profitability, and healthier financial structures were empirical evidence of a fairly satisfactory corporate restructuring.

With respect to corporate governance, though economic recovery resulted in some improvement in the governance of listed companies according to findings of the Thai Institute of Directors Association, poorly governed companies still exist as evidenced by SEC charges. Worse still, Thailand's Prime Minister (who is chairman of the National Governance Committee), was charged with unethical conduct and serious conflicts of interest. Massive public demonstrations called for his demission. Politically, good public sector governance is a more serious and more urgent goal than good corporate governance.

## 2) Legal aspects of Thai corporate reorganisation

Shareholders rights in private and public corporations (as residual claimants on corporate property), were given reasonable protection under the Thai civil and commercial codes, the Thai penal code, and the public company law. Shareholders in public companies, in comparison to private companies, may receive better treatment as far as their monitoring role is concerned, as well as the legal punishments imposed on directors of public companies. Creditor protection rights are believed to be acceptable, though there is still room to improve legal procedures in public auctions of assets and foreclosures.

Under the reorganisation part of the Thai Bankruptcy Act (which was revised in 1999), shareholder rights were completely suspended when debtor firms became insolvent (according to the balance sheet test) and were put into reorganisation by the court. Following this, a debtor executive legally represented the general interests of the previous management. To pass the reorganisation test by the court, the balance sheet insolvency test needed to be passed, and honesty in intent and prospects of success needed to be shown. Unless the debtor executive, plan preparer, and plan administrator were the same entity (natural or legal), the debtor executive could act as a check and balance, and a monitoring agent to ensure that debtor and previous shareholder interests are protected by the new management (*i.e.* the plan administrator) running the company.

In all reorganisation procedures, creditors' meetings are always given the ultimate deciding voice. In this sense, one can say that Thai reorganisation law is creditor friendly, but it would be wrong to say that the law is excessively pro-creditor. Firstly, certain groups of creditors can be crammed down. Lost unsecured creditors can suffer a great deal if debtors use various schemes to mobilise over 50% or a simple majority of aggregate creditors' claims (plus only one group of creditors commending two-thirds of creditors' claims) to get the plan accepted in their favour. This is not just a possibility, but has happened in several cases in practice. Such outcomes are made possible by unscrupulous and dishonest methods that the court is unable to prevent.

Secondly, the Thai law permits either creditors or the debtor executive (as agent of the debtor), or both, to file for or initiate reorganisation, and submit the plan preparer, the plan and the plan administrator. If the debtor takes this initiative and creditors disapprove, the voting requirement for creditors is slightly stricter. Thirdly, in a systemic crisis, there are multiple creditors for each debtor firm, and creditor co-operation can be costly (especially for foreign creditors). Co-operation between debtors and creditors was the norm, not an exception.

Since Thailand's legal experience in corporate reorganisation is recent (compared with that of Singapore, Korea, and others), Thai law is said to lack detail. The price of missing detail is high when the judges become less circumspect and judicious. It may lead to excessive discretion and arbitrary decisions that eventually lead to legal contest. A bankruptcy judge at the Supreme Court observed that Thai legal criteria for passing a reorganisation plan are only about one-third of those found in the US Bankruptcy Code. A similar pattern can be found throughout Thai reorganisation. Suggestions for future changes are being discussed.

### **3) The relative importance of the institutional channel in debt restructuring**

Rational self interest will influence the institutional channels that both creditors and debtors choose. Unsecured creditors with less bargaining power will not choose liquidation, whereas secured creditors have more options. Creditors, in general, will handle debtors on the basis of the debtor's long-term ability to pay and the availability of collateral. Generally speaking, and other things being equal, minimisation of litigation and other transaction costs will determine each party's institutional mode. In this regard, out of court or private workout is least costly and, though direct information is hard to get, it is believed to account for 15-25% of all

channels in Thailand. For financially insolvent debtors, the maximum institutional protection and accompanying debt reduction can be secured through court approved reorganisation under optimal conditions. In between, the Bangkok Approach or CDRAC have played a vital role for mostly non-insolvent firms.

The statistical information below on the distribution of debt restructuring via different institutional channels accords reasonably well with the above reasoning.

**Table 3: Relative role of debt restructured by different institutional channels**

Year	NPL	NPL (%) Loan	Debt Restructured by Financial Institution	Debt Restructured Outside Central Bankruptcy Court		Debt Restructured via Central Bankruptcy Court	
				CDRAC	TAMC	Verified Debt	Debt Approved with Plan
1998	2 674.5	45	156.8	47.7	-		
1999	2 094.4	39	1 072.0	495.5	-	215.6	38.5
2000	863.6	18	1 953.5	1 043.0	-	1 221.3	332.5
2001	477.4	10	2 429.1	1 275.3	28.1	1 523.0	636.3
2002	770.3	16	2 725.9	1 481.0	501.1	1 600.5	784.8
2003	641.8	13	2 961.2	1 443.6	432.3	n.a.	927.5
2004	598.6	11	n.a.	1 494.6	762.4	n.a.	1 011.5
2005	583.9 (Oct.)	10	n.a.	1 498.4 (May)	772.4 (June)	n.a.	

Note: Unit: billion THB (Thai baht).

Source: Bank of Thailand, TAMC and Central Bankruptcy Court.

The breakdown of debt being restructured by various institutional channels cannot be summed to yield the total NPLs being restructured at financial institutions under supervision of government authorities because the debt being verified and approved for restructuring by the Central Bankruptcy Court in the reorganisation process includes debt owed to trade creditors, domestic non-financial firms and financial institutions registered abroad. For the case of Thailand, suffice it to say that approximately THB 3-3.5 trillion (Thai baht) of NPLs are being restructured, and that court-based reorganisation at the Central Bankruptcy Court amounts to one-third. The rest is settled out of court, of which CDRAC (via the Bank of Thailand as co-ordinators) accounts for almost half of the total. Since the choice of channel is voluntary, one can conclude that this is also an efficient channel from a private party's point of view.

#### **4) Some empirical aspects of Thai corporate restructuring**

##### ***Quasi US Chapter 11: The unintended consequence of systemic insolvency, and embedded institutions***

In general, despite the lack of experience in implementing reorganisation via the courts when the crisis hit Thailand in 1997, court-based reorganisation has been quite successful. Success can be attributed to court perceptiveness and leniency towards debtor firms to be reorganised plus a simple aggregate majority voting rule required for creditor approval. The overall rejection rate of reorganisation requests is surprisingly low at not more than 10%, which is believed to be lower than that of Korea. Rejected reorganisation requests or rejection of plans, as well as subsequent court orders for liquidation are also very low.

In spite of the law giving the power of approval of plan preparers, the plan, and plan administrator to creditors, studies based on almost 200 firms have shown that debtors have been given privileges by creditors to manage their insolvent firms and to prepare plans (see Table 4 below). This is partly specific to Thai culture where family ownership and management are still predominant.

These majority inside owners are also willing to be co-operative with creditors. Another reason is that Thai banks did not develop close relationships with debtors like those found in Japan or Germany. Thai financial institutions lend on the basis of collateral. They do not seem to know the debtor firms that well. Another reason is the shortage of management expertise.

**Table 4: Planner and plan administrators**

<b>Debtor as planner</b>	<b>Number of companies</b>	<b>Percentage of total</b>
Debtor as planner	139	77
Creditor as planner	41	23
<b>Total</b>	<b>180</b>	<b>100</b>
Debtor as plan administrator	106	77
Creditor as administrator	32	23
<b>Total</b>	<b>138</b>	<b>100</b>

Source: Pairoj et al. (2002).

### ***Rehabilitated companies' performance: Empirical findings***

The crisis in 1997 did not hit all firms equally. For instance, listed companies on the Stock Exchange of Thailand (SET) showed negative profits throughout 1997-2000. Yet, overall, equity did not turn negative. Insolvent companies on the SET did, however, require a separate treatment and classification, and were referred to as “rehab companies” or rehabilitation companies. Until 2003, equity was negative. As of September 2005, about 102 listed companies were classified as rehab companies. These companies were likely to be under court-based reorganisation at the Central Bankruptcy Court. Cross section data between 1998 and 2004 of 41 companies permit statistical testing of two periods (1998-2000 and 2001-2004) to see what variables explain corporate and financial performance. The variables chosen are short-term debt levels, industry performance, the reduction in debt (or haircut), and management control. The management control variable is a dummy variable with a value of zero if the company is creditor controlled and one if it is debtor controlled. Corporate performance and financial health are represented by EBITDA or Earning Before Interest and Tax plus Depreciation Allowance, which is a measure of cash flow. Financial health is measured by the improvement in share price and debt/asset levels. A linear model gives ordinary least square results as follows.

#### **Corporate Performance**

EBITDA/Asset=-0.1238 – 0.0019\* Short run debt + .0002\*

(1.75) (1.84)

Size of Debt reduction + 0.2019\*\*\* + 0.7260 Industry Performance

(2.93) (0.84)

+ (2019\*\*\* Management control

(2.93)

R<sup>2</sup> = .2967

Adj. R<sup>2</sup> =.1962

**Financial Health**

Improvement in Share Price = 0.6954

(0.81)

- 0.0138 – 3.9906 Industry Performance

(-1.6) (0.59)

+ 0.0017\*\* Size of Debt Reduction

(2.45)

+ .692 Management Control

(1.16)

R<sup>2</sup> = .2101

Adjusted R<sup>2</sup> = .0972

\*, \*\*, \*\*\* Indicate statistical significance at 10%, 5% and 1% respectively.

Source: Pairoj and Nuttanan (2005).

It is interesting to see that most variables show the right sign. The size of debt reduction is important, and the statistical tests seem to confirm that, in the Thai case, insolvent firms being managed by debtor appointed plan administrators perform better than those of creditors.

**Table 5: Financial indicators of 41 listed firms under rehabilitation**

	<b>1996</b>	<b>1998</b>	<b>2000</b>	<b>2002</b>	<b>2003</b>	<b>2004 (Q3)</b>
<b>Total Assets</b>	524.9	628.0	453.4	423.9	453.0	428.2
<b>Total Liabilities</b>	355.4	544.7	591.7	449.4	377.8	394.3
<b>Total Equity</b>	169.5	83.4	-138.4	-25.5	75.2	87.8
<b>EBITDA</b>	77.8	70.0	-44.5	31.9	44.7	28.0

<b>Debt/Assets</b>	.68	.87	1.31	1.06	.83	.82
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Note: Unit: Billion Thai baht.

***Some empirical observations on the effects of the crisis on ownership and management control***

The data from the tables below show ownership and management control changes in Thailand. It needs to be pointed out that, unlike the pioneering study in the US by Berle and Means where separation of ownership and control is usually assumed, most Thai companies that are listed on the stock exchange are still predominantly family controlled enterprises. Family ownership of 25% of the shares is often sufficient to control the company, especially if some form of pyramiding is used. Management and major shareholders are usually the same persons.

**Table 6: Ownership and management control pre-1996 and post crisis (2005)**

Absolute Level of % Change	Ownership Change		Control Change	
	No. of Firms	% of Total	No. of Firms	% of Firms
<25%	32	46	3	17
25 < × < 50%	8	12	0	0
50 < × < 75%	11	16	4	22
<75%	18	26	11	61
<b>Total</b>	<b>69</b>	<b>100</b>	<b>18</b>	<b>100</b>

**Table7: Ownership and control (55 listed firms under rehabilitation)**

	No. of Firms	% of Firms
<b>Ownership and control are similar to 1996</b>	51	93
<b>Ownership and control separate</b>	4	7

<b>Inside Management (Management control is held by major shareholders) in 1996</b>	40	73
<b>Outside Management</b>	15	27

**Table 8: Shareholding of controlling shareholders in percent (55 listed firms under rehabilitation)**

<b>1996 Pre-crisis</b>	65
<b>2005 Post-crisis</b>	24

Source: Pairoj and Nuttanan (December 2005)

Several major conclusions can be drawn from the Thai experience. First, in general, significant changes in the absolute level of ownership (50 to 75% and more) is needed for the original owners to lose control of companies. Moderate changes in ownership allow previous owners to bargain and negotiate with creditors. Second, in the Thai context, a change in ownership does not necessarily imply loss of control. Creditors are often willing to let original owners run the reorganised firm if the firm has future value and the original owners are honest and co-operative with major creditors.

## **5) Institutional changes in the last two years (2004-2006)**

### *Some observations on institutional changes*

Institutional changes viewed either from the supply or demand side can be of revolutionary or evolutionary types. Evolutionary processes probably dominate since it is difficult to overhaul or uproot embedded cultural behaviour. Even legal changes, in most instances, follow rather than lead societal demands. The development of Thailand's insolvency system can be considered evolutionary in this sense. When there is no real need, institutions do not emerge. Legal experts, especially from the government sector, tried to introduce reorganisation procedures in the bankruptcy law prior to the 1997 crisis. However, it took the 1997 crisis to trigger real changes in the supply of various institutions (formal and informal), ranging from a new bankruptcy law to new and more efficient approaches to legal execution (civil or bankruptcy cases), civil procedures etc. Meanwhile,

society is looking forward to further reforms in business and corporate law such as the use of security as collateral, reform of the bankruptcy law to allow debtors to voluntarily file for bankruptcy, and reform of the reorganisation part of the bankruptcy code. On court-based reorganisation, debates abound regarding the role of official receivers (too much power and too little expertise?). Meanwhile CDRAC (under the Bank of Thailand) has already accomplished its major goals. The division will therefore be closed.

### ***Developments and major changes in the appeals procedure of Thai corporate reorganisation in bankruptcy***

According to some legal scholars, a milestone in legal practice took place in October 2004 when the Act of Establishment of the Bankruptcy Court and Bankruptcy Procedure 1999 (No.2) as amended in 2004 was implemented. This is considered a historical change since it is the first time that an appeal by leave, considered by a meeting of all judges in the Bankruptcy Division of the Supreme Court, will be made possible and complement an appeal by right as presently stipulated in the law. Instead of the lower court or court of first instance being an active part in the process (as far as the right to appeal is concerned), the Supreme Court will also actively deliberate the approval of an appeal requested by legal parties when the usual right to appeal is prohibited.

Prior to its total abrogation in 2004, section 90/79 of the Bankruptcy Act (No.6) as amended in 2000, stipulated that an interlocutory order, or a court order giving a decision concerning business reorganisation, cannot be appealed except for:

1. An order dismissing the petition;
2. An order allowing or disallowing a creditor from receiving payment in reorganisation either in whole or in part;
3. An order to place the debtor under absolute receivership; and
4. An order that the chief judge of the Court of First Instance or the chief judge of the region having jurisdiction (as the case may be), deems appropriate in the interests of justice, and the judge permits a filing of written appeal.

Permission for an appeal against an interlocutory order may be given only after a decision of the case has been made, and such decision has been appealed. Because of appeal restrictions, anything that is not covered by items 1-3, according to section 90/70, require the permission to appeal to be approved by the chief judge of the Bankruptcy Court or the chief judge of the region. The practical consequence of 90/79 is that appeals are being

closed or not granted by the chief judge, thus causing complaints of injustice in court decisions. Many court decisions that stir up controversy, beg for greater transparency, yet are not subject to check or scrutiny since the right to appeal is barred.

One of the important restrictions to appeal is the court's decision to approve or disapprove the plan, and the plan administrator. Such decisions, if incorrect, unsound, or unaccountable can cause great harm to affected parties.

Due to the inherent weakness of section 90/79 and the social costs that resulted, major changes in the appeals processes were made in 2004. Civil and criminal offences in bankruptcy are now handled by the Central Bankruptcy Court. With respect to the appeals process, section 90/79, which dealt with reorganisation issues, was abrogated. In its place is the Bankruptcy Court and Bankruptcy Act, 1999, No. 2, which was amended in 2004. The law is being enforced for an appeal to court verdict or order of a former bankruptcy case, reorganisation cases or related civil cases. This is an appeal to court verdict or order as stipulated in section 24 of the 1999 Bankruptcy Court Act (No.2 amended 2004). As for the time requirement, section 24 utilises two systems within one month from the date the court issues its verdict. Cases for appeal to the Supreme Court fall into two categories: 1) appeal by right; and 2) appeal by leave.

#### *Cases where legal parties have an automatic right to appeal*

Section 24 of the 1999 Bankruptcy Court and Procedure Act and Section 3 of the Amended 2004 Act, stipulate that:

1. Appeal from the Bankruptcy Court to the Supreme Court must occur within one month;
2. Right to appeal automatically applies to five court verdicts or orders, three of which are mentioned above. The additional two are orders for dismissing the reorganisation order, and court orders on civil cases related to bankruptcy. This right to appeal is not to be in violation of legal rules regarding civil procedures to appeal.

#### *Cases where legal parties have no right to appeal but the Supreme Court may grant permission*

This is the new principle whereby the former prohibition of appeal to the Supreme Court according to section 24 of Bankruptcy Court Act is being exempted by the new provision. According to section 24, two categories of cases are prohibited from appeal. The first category is bankruptcy cases.

Apart from the five cases mentioned in section 24, no appeal is allowed for bankruptcy cases that are related to court orders of approval for composition, court adjudication of bankruptcy, and court adjudication for discharge from bankruptcy. Further, no appeal is allowed for reorganisation cases that are related to court orders for reorganisation to proceed, and court orders to terminate reorganisation. The second category applies to court orders that are not allowed to be appealed according to the appeal procedure as stipulated in the statutory act concerning civil procedure.

Section 26 of Bankruptcy Court and Procedure Act allows legal parties to request an appeal to the Supreme Court concurrently. The Bankruptcy Court may, upon examining the appeal, reject it due to the fact that it falls into prohibited categories under Section 24. In such case, the Bankruptcy Court shall send the appeal to the Supreme Court. Alternatively, upon being rejected by the Bankruptcy Court, the legal parties can submit a request for appeal directly to the Supreme Court within 15 days after the rejection.

The Supreme Court, in deliberating the permission to appeal, will base its decision on the following reasons. The court verdict or order is in conflict with the verdict of another high court, or the court verdict is inconsistent or in conflict with the Supreme Court verdict. The decision to grant an appeal shall be made by a simple majority of the judges in the Bankruptcy Department of the Supreme Court.

## **6) Judicial cases: What have we learned?**

### ***Thai Petrochemical Industry Public Company (TPI)***

The last two years have witnessed an incessant and furious legal battle between Mr. Prachai Leoprairat, the former executive and original major shareholder of TPI, and the Ministry of Finance, the appointed planner or plan administrator.

In order to provide a brief background, the court order to remove the creditor appointed plan administrator, Effective Planner Ltd., in early 2003 was controversial enough. Many legal scholars doubt the authenticity and transparency of the court's reasoning. There seems to be lack of solid evidence of either fraud, mismanagement or incompetence on the part of Effective Planners Ltd., even if TPI's progress on the plan was not satisfactory. Even so, the creditors were not alarmed by TPI's performance and were content with Effective Planners.

The logic is that creditors insist on nominating their own plan administrator at the creditors meeting for court approval. However, in mid-

2003, not only did the court unexpectedly take the unprecedented step of rejecting the creditors' meeting's decisions, but ordered the future creditors meeting to nominate the government or Ministry of Finance appointed plan administrator. Until then, this was the most contentious legal dispute in Thai business history and caused TPI creditors great anxiety and consternation. Most legal scholars thought the court decision was legally unprincipled and arbitrary, but have yet to venture to write about the decision.

The TPI judges might have thought that a neutral disinterested government-appointed plan administrator would end the protracted in and out of court quarrel between the debtor executive, Mr. Prachai and creditors. They were wrong.

Outside of the legal arena, periodic clashes between workers and the labour unions of two factions on the TPI factory site in Rayong province ensued. As a pre-emptive strategy to prevent labour militancy, the chairman of the plan administration committee (a former military commander) brought in military personnel to manage the TPI factory in the provincial area. As time went on, the Ministry of Finance plan administrator, however, was able to win the heart of the majority of workers using the carrot rather than the stick. The improved performance of TPI, the industry and the economy made it possible for the plan administrator to increase incentives for workers in the form of bonuses and other benefits.

Between 2004 and 2005, when the new plan administrator managed the company, there was no peace for any party. Court battles continued and the original fundamental conflict prevailed. Having accepted the loss of privilege in managing the debtor company, Mr. Prachai continued to voice his complaints through litigation about the excessive salaries that he thought were being paid to the plan administrators and unnecessary expenses. Mr. Prachai himself was accused in court by several government agencies, including the Division of Secret Intelligence (DSI). This forced the Security Exchange Commission (SEC) to seek a Bankruptcy Court order to remove him from his executive position in listed companies. According to the SEC and stock market rules, an executive cannot hold a position in a listed company if he or she is under prosecution. The Bankruptcy Court, however, ruled in his favour since he was a debtor executive in a company under court-based reorganisation.

Mr. Prachai insisted on the proper valuation of the company and the share price when the court approved the change in the plan, and the subsequent change in the financial and ownership structure of TPI. From the beginning, when the first plan was approved in 1999 and conflict with creditors emerged, Mr. Prachai always claimed that his company and the share price were worth several times more than stated in the creditor plan.

Therefore, when creditors converted the debt (mostly unpaid interest into equity with practically no haircut), such that creditors owned 75% of the equity, he bore a considerable grudge against them and accused them of wanting to take over his company.

The same problems were repeated again in 2005 subsequent to the court approval of a major plan revision for TPI. Matters were eventually taken to the Supreme Court. In the end, however, Prachai lost. The court did not seem convinced by his reasoning that previous shareholders, like himself, were treated unfairly.

As it is, the current financial structure after the capital change of TPI has improved. At the end of 2005, USD 2 700 million (United States dollars) in outstanding debt were reduced to USD 1 800 million to be rescheduled and paid over the next 12 years.

About 19.5 billion shares at THD 3.30 baht per share will be issued to existing shareholders, creditors, new strategic and non-strategic investors that are quasi-governmental enterprises (the government Mutual Fund (10%), the Government Provident Fund (10%), creditors (8.5%), the Government Savings Bank (10%); Thai Petroleum Public Co. or TPP (31.5%) and the original shareholder (30%)). Mr. Prachai will own less than 10% of the shares of TPI after the subscription.

Through government intervention, TPI became a quasi-government enterprise since government and quasi-governmental agencies hold 60% of its shares. It is not a full-fledged state enterprises since 51% is not directly owned by government agencies. The consequence of the court decision in 2003 to order management to be under a government directed plan administrator has resulted, two years later, in converting a purely private company into quasi state-owned enterprises. This took place and was made possible by changes to the framework and implementation of the corporate reorganisation law, which had been acrimoniously fought and opposed by former major shareholders.

Is this fair? This is debatable. Is it viable? It seem to be. But it cannot be compared to the alternative plan of Mr. Prachai who come up with a much higher share price than THD 3.30. He proposed bringing in new foreign private investors from China. The alternative remains only hypothetical. No one can say which outcome would have been better.

### ***Natural Park***

Natural Park, a publicly listed company that went through court-based reorganisation received less public or media attention than TPI. Yet this case is no less scandalous. It was very politicised because the parties involved

ranged from businessmen to politicians of the highest rank. From a policy standpoint, the judicial contest and the court verdict yield important lessons. Legal professionals doubt the integrity of the judge panellists. At issue is the approval of the plan by the Bankruptcy Court. Most people who read the plan thought that it was a pure lemon, and that the plan should not be passed. The plan forced creditors to receive less than 5% of the debt owed. Without dishonesty, liquidation of the company would have enabled creditors to receive a larger payment than by going through reorganisation.

There was a serious cram down on some creditors while the Asset Management Company and other new investors benefited more. Creditors, according to the plan received 0.5-2% of their money because the debtor company, Natural Park, crazily sold its claims on its subsidiaries (worth THD 3.7 billion) for just THD 1 million and incurred substantial losses. Debtors claims worth THD 8.3 billion were not included in the plan. The creditors, naturally, appealed to the Supreme Court. Justice seemed to work at the Supreme Court since it deemed the plan invalid.

However, the tragic part relates to section 90/76 of the Bankruptcy Code. When the Supreme Court order came down to the Bankruptcy Court, the plan administrator (who was paid a meagre THD 1 million/month) had already implemented the plan and paid creditors. Section 90/76 legally protects any actions done since the plan approval, and the case was closed. Frustrated creditors have had to resort to traumatic civil and criminal proceedings.

State-owned Krung Thai Bank was charged with political favouritism in making reckless loans to the company. When the loans went sour, the SEC charged its executives with neglecting their fiduciary duties. This charge emerged because one of the company directors permitted abusive related-party transactions and failed to protect the interests of shareholders. The Securities Exchange Commission pressed criminal charges on this executive. However, the SEC's efforts were ineffectual since special prosecutors refused to press charges in court. Many lawyers were suspicious of political interference, since the company is known to be intimate with higher echelons in the present government.

### ***Prasit Pattana (Phaya Thai Group Hospital)***

This case might not have captured the public's attention if not for the fact that the debtor executive and the original major shareholder, Dr. Arthit Urairart, was a famous politician. There was also a widely held belief that a major shareholder (Mr. Vichai Thongtaen, former legal counsel of Prime Minister Taksin), is the nominee for the Prime Minister's Chinnavart family.

Some insiders deny the Prime Minister’s involvement. They believe that Mr. Vichai’s family was genuinely interested in the Phaya Thai Hospital Group.

The basic problem in this case is that under court-supervised reorganisation, the creditors (who comprised several Thai banks) did not allow (for unknown reasons) Dr. Arthit, the previous major shareholder, to run the company. Instead, PricewaterhouseCoopers (PWC) was picked as the plan administrator. Subsequent to the restructuring, Dr. Arthit’s family became a minor shareholder. When the plan administrator requested the court to terminate the reorganisation, Dr. Arthit submitted a petition to the Supreme Court to annul the bankruptcy court decision on the grounds that PWC acted fraudulently. The Supreme Court has issued the order that the Bankruptcy Court take the complaint into consideration. The issues are currently pending.