CONSUMER BANKRUPTCY IN THAILAND

BY

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DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of the Science of Law in Law in the Graduate College of the University of Illinois at Urbana-Champaign, 2012

Urbana, Illinois

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ABSTRACT

Very little is known about the 13,000 Thais who find themselves in the Thai bankruptcy system each year. This system not only affects the individuals who have a bankruptcy case filed against them, but it also affects the Thai economy more broadly. Annually, the Thai bankruptcy system handles debts totaling over 279,079 million THB (about 9,302 million USD), about 2 percent of Thai gross domestic product. This study uses an original, hand-collected database of 999 randomly chosen bankruptcy files as well as interviews with fifty individuals in their capacity as loan officers, debt-restructuring officers, attorneys representing creditors, bankruptcy judges, and bankruptcy trustees to provide the first empirical portrait of individual Thai bankruptcy filers and the Thai bankruptcy system more generally. The research inquiries include: Who are these debtors? What drives them to bankruptcy? What are their financial situations before bankruptcy? How much money do they owe? What types of debt do they have? and so forth.

The research shows that bankruptcy affected both men and women at roughly the same rate, with the problem of bankruptcy affecting Thai people nationwide. On average, the Thai bankrupt is in his or her fifties. Default on a loan agreement was the dominant reason behind a creditor filing a bankruptcy complaint against the debtor. “Employee” is the most popular occupation, and most debtors no longer work after bankruptcy. The debtor’s previous monthly salaries before the financial turmoil were much more than the average household income of the general population. Furthermore, most debtors carried a heavy debt load into bankruptcy with scant assets, resulting in little or no recovery for creditors.
To my parents,

Cheep Jullamon and Saowalak (Ratanawichit) Jullamon

for their unconditional love
ACKNOWLEDGMENTS

First, I would like to very much thank Professor Robert Lawless, my principal advisor, for seeing the potential in my research proposal and accepting me as his first J.S.D. advisee. His “push-but-not-shove” style of pedagogy, which admittedly at times tested my own patience and will, paid off handsomely in the end. I always appreciated his attention to my research and his understanding and patience in my rush to complete the dissertation as early as possible. I would also like to express my gratitude to Professors Charles Tabb, Jennifer Robbennolt, and Anna-Maria Marshall for agreeing to be on my doctoral committee. All of them have provided constant and useful comments and suggestions from the research design until the final touches of the dissertation. Furthermore, this research has benefited greatly from the advice of the faculty members of the University of Illinois College of Law, namely Professors Ralph Brubaker, Nuno Garoupa, Richard Kaplan, and Thomas Ulen. All my J.S.D. colleagues including Carlos Rubio, Carolina Arlota, Chun-Yuan Chen, Shiyi Chen, Anthony Kakooza, Romin Tamanna, and Aisi Zhang have provided much valued critical feedback, moral support, and great friendship throughout my studies.

The generosity of Varaporn Siraprapasiri, Ravewan Schaper, and Piyada “Jan” Hill has made my study life in Chambana a lot less stressful. I am also grateful to members of the Graduate and International Studies department including Dean Charlotte Ku, Christine Renshaw, Ann Perry, and Laura Owen. All of them have gone out of their way to help me succeed in my academic pursuits.

Special mention must go to my family. I very much miss my late grandfather, Sayom Ratanawichit, Ph.D., from whom I inherited what I term the “English-language plus” DNA. Without this I could not have accomplished my J.S.D. studies. Last but not least, I am happy to have made my mom and dad proud of me for I am truly indebted to them for their love.
# TABLE OF CONTENTS

INTRODUCTION .......................................................................................................................... 1

CHAPTER 1: COMPARATIVE CONSUMER BANKRUPTCY LAW:
THE UNITED STATES OF AMERICA AND THAILAND ......................................................... 6

CHAPTER 2: BASIC DEMOGRAPHY AND FINANCIAL PORTRAIT OF
INDIVIDUAL DEBTORS IN THE THAI BANKRUPTCY SYSTEM ...................................... 51

CHAPTER 3: REPAYMENT PLAN IN BANKRUPTCY CASES
IN THAILAND ......................................................................................................................... 103

CONCLUSION ....................................................................................................................... 121

REFERENCES ....................................................................................................................... 126

APPENDIX ............................................................................................................................ 129
INTRODUCTION

Modern Thai bankruptcy law was enacted into the Thai legal system over seventy years ago. The first statute was promulgated in 1940; this law is said to have been based on the Insolvency Act of the United Kingdom (Mahakun2010, 2). Thai bankruptcy law deals with insolvent debtors who are both a natural person and a juristic person and addresses the task of how to collect and distribute the debtors’ assets to their creditors as well as how to release an individual debtor from overwhelming debts. Up until 1998, the striking feature of Thai bankruptcy law when compared to US bankruptcy law was that there was only an involuntary case commencement and no reorganization chapter. One legal ramification of the 1997 economic crisis in Asia which greatly affected Thailand was the introduction of reorganization law into the existing bankruptcy law. Reorganization law provides an opportunity for an insolvent debtor with debt not less than 10,000,000 THB (around 333,000 USD)\(^1\) to voluntarily propose its payout plan to its creditors. Nonetheless, only a debtor who is a limited company or a public limited company is eligible to be a debtor under reorganization provisions; partnerships and individual debtors cannot use the reorganization procedure to solve their financial setbacks.

In addition, bankruptcy law had utilized general civil procedure rules to govern bankruptcy cases until 1999 when a separate law, the Act for the Establishment of and Procedure for Bankruptcy Court B.E. 2542 (1999 CE), went into effect and established specialized rules of procedure for bankruptcy courts. The rationale given behind this enactment included the different characteristics of the bankruptcy case from other types of civil and commercial cases and that the consequences of bankruptcy cases also affect the Thai

\(^1\) The exchange rate between US dollar (USD) and Thai baht (THB) on October 5, 2012 was around 1 USD = 30.6 THB (Bank of Thailand 2012). To simplify the exchange rate calculation, the dissertation will treat 1 USD as the equivalent of 30 THB.
economy as a whole. Furthermore, it was deemed that the adjudication of a case by specialized judges and procedure would provide faster and fairer process. After the devastating financial upheaval in 1997 and the following legal amendments, bankruptcy and reorganization issues have increasingly gained attention from the general public.

From 2006 to 2010 there were over 13,000 new consumer and business bankruptcy cases each year\(^2\) (the Central Bankruptcy Court 2012; the Legal Execution Department, Ministry of Justice 2012). On average for the past five years, two out of 10,000 persons were sued in bankruptcy cases yearly. The annual amount of debts during this period was approximately over 279,079 million THB\(^3\) (about 9,302 million USD). The caseload of the Thai bankruptcy system has been growing, leading to a number of problems. First, the number of cases in the Central Bankruptcy Court (CBC)\(^4\) is not proportionate to the number of judges, legal officers, and administrative personnel. Therefore, delays in hearings are inevitable. Second, the administration of bankruptcy cases, which is performed by the Ministry of Justice’s Legal Execution Department (LED),\(^5\) is also afflicted with the same

\(^2\) **TABLE 1.** The bankruptcy filings for each year are broken down below (Central Bankruptcy Court 2012):

<table>
<thead>
<tr>
<th>Years</th>
<th>Numbers of New Bankruptcy Cases</th>
<th>Numbers of Receivership Orders Issued by the Central Bankruptcy Court in Bankruptcy Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>13,244</td>
<td>7,108</td>
</tr>
<tr>
<td>2007</td>
<td>15,380</td>
<td>13,440</td>
</tr>
<tr>
<td>2008</td>
<td>16,770</td>
<td>8,639*</td>
</tr>
<tr>
<td>2009</td>
<td>18,525</td>
<td>17,347</td>
</tr>
<tr>
<td>2010</td>
<td>14,256</td>
<td>14,482</td>
</tr>
</tbody>
</table>

The Central Bankruptcy Court did not issue a receivership order in all new cases within the year the cases were filed. In many cases, the court issued a receivership order in a subsequent year, dismissed the cases, or the creditors withdrew their complaints.

*Part of the reason that the court handed down fewer receivership orders in 2008 was the relocation of the court.

\(^3\) Since in 2007 the gross domestic product (GDP) in Thailand was 8,469.1 billion THB and the bankruptcy debt was 187.24 billion THB, bankruptcy debt was approximately 2.2 percent of GDP. In the US, in 2011, the total liabilities of individual debtor in chapter 7 cases were about 1.3 percent of the US GDP. Non-performing loans (NPL) by Thai financial institutions at the end of 2007 stood at 485.3 billion THB, comprising 5.7 percent of GDP (National Statistical Office 2012; Central Bankruptcy Court 2012; Administrative Office of the U.S. Courts 2012; World Bank 2012).

\(^4\) The Thai bankruptcy court was established in 1999. It is at court of first instance level. There are two types of bankruptcy court: the Central Bankruptcy Court and regional bankruptcy courts. So far no regional bankruptcy court has been founded. Therefore, the Central Bankruptcy Court has exclusive jurisdiction over bankruptcy and related cases throughout the Kingdom of Thailand.

\(^5\) The Legal Execution Department is a government agency within the Ministry of Justice. The main missions include the execution of civil case judgment and the administrations of bankruptcy and reorganization cases.
problem. Third, parties in interest, especially the debtors and the creditors, complain about these slow procedures. Due to the sluggish process, debtors receive their discharges later than they should, and creditors get paid late.

The current bankruptcy law in Thailand is the Bankruptcy Act B.E. 2483 (1940 CE) as amended by Bankruptcy Act (No.7) B.E. 2547 (2004 CE) (hereinafter referred to as “Bankruptcy Act”). Since Thailand is a single state and has a national government, the Bankruptcy Act passed by parliament has effects on any bankruptcy case in the country. There are nine chapters in the Bankruptcy Act: Chapters 1 to 8 and Chapter 3/1. Chapters 1 to 4 concern procedures for the liquidation and the filing of a repayment plan for individual, partnership and corporate debtors. Chapter 3/1 is an exclusive reorganization chapter for a debtor who is a limited company or a public limited company.

Regarding the bankruptcy procedure for an individual debtor, the debtor cannot file a bankruptcy petition voluntarily. Rather, the creditor will file a bankruptcy complaint against the debtor. There are two significant requirements: the debtor is insolvent and is indebted to the sum of not less than 1,000,000 THB (approximately 33,000 USD). If the bankruptcy court finds these criteria exist, the court will issue an absolute receivership order. If not, the court will dismiss the case. Then, in a case whereby the debtor can successfully submit a repayment plan, the debtor does not have to go bankrupt. Nonetheless, if the debtor does not hand in the repayment plan or does submit but the plan does not get both approval from the creditors’ meeting and a confirmation by the court, the court will issue a bankruptcy judgment.

Considering Thai bankruptcy law as a whole, the designers of this statute were primarily concerned about debt collection for the creditors rather than debt relief for the debtors. From 1940 to 2004, the debtor got discharged from bankruptcy ten years after the closing of the case through the procedure called “the termination of bankruptcy” (Bankruptcy
Prior to the termination of the bankruptcy case, the adjudged bankrupt is not allowed to enter into any transaction related to his or her assets or business except with the permission of the trustee, court, or creditors’ meeting. The debtors’ salary is garnished and they cannot leave the country without the permission of the trustee or the court. During this time, the trustee is empowered to gather the debtor’s assets, put them up for public auction, and distribute any money less the administrative expenses to the creditors.

The 2004 amendment changed the discharge provision to allow an individual debtor to get discharged from bankruptcy after three years in bankruptcy as measured from date of issuance of the bankruptcy judgment (Bankruptcy Act § 81/1 (2004)). Thus, as long as the court does not issue a judgment, the discharge time does not commence. Lengthy queues at the court play a major role in delaying the discharge of the debtor from bankruptcy and the backlog of bankruptcy cases also hurt the creditors. Without the judgment, the bankruptcy trustee cannot sell the properties of the estate (Bankruptcy Act § 63 (2004)). In turn, the distribution of the debtor’s assets has to be postponed. Furthermore, from an economic point of view, these consumer and business debts adversely comprise part of the Thai economy.

The government has initiated many schemes to reduce the number of bankruptcy filings such as the extension of the repayment of debts incurred by farmers, setting up a mediation procedure during the execution of the judgment period, and providing free financial consultation to the public. Many consumer protection agencies argue that the major cause of these insolvencies is the government not strictly regulating the interest rates charged by banks and financial institutions. For years both government and non-governmental bodies have clearly tried to tackle the bankruptcy situation in Thailand. However, such attempts by both sides lack supporting evidence or data. Instead, solutions are suggested out of personal experience or even bias. Unsurprisingly, the present circumstances surrounding bankruptcy in Thailand have made the issue a major concern within the country.
Currently, there is no empirical research on individuals who go bankrupt in Thailand. My research, therefore, will be the first to study the conditions of consumer bankruptcy. The relevant inquiries include: Who are these debtors? What drives them to bankruptcy? What are their financial situations before bankruptcy? How much money do they owe? What types of debt do they have? With such information, a better understanding of the Thai bankruptcy situation will ensue, leading to recommendations upon which policymakers can base their judgments. This research will provide a portrait of consumer overindebtedness in a developing economy, but even more importantly, it will also help the Thai consumer debt system work better for debtors, creditors, and the general public.

The dissertation proceeds as follows: Chapter 1 compares and contrasts the main features of consumer bankruptcy laws in the United States of America and Thailand. Chapter 2 elaborates on the demography and financial pathology of individual debtors in the Thai bankruptcy system and Chapter 3 explores the repayment plan regime under Thai bankruptcy law.
CHAPTER 1: COMPARATIVE CONSUMER BANKRUPTCY LAW: 
THE UNITED STATES OF AMERICA AND THAILAND

I. Introduction

This chapter compares the bankruptcy laws of the US and Thailand on consumer bankruptcy. The study aims to single out and discuss the main features of the two systems. Since the research methodology is based on studies of the US consumer bankruptcy system, comparing the formal Thai and US bankruptcy laws will help readers understand how the data will be both comparable and different from the US-based studies.

In the United States, “Bankruptcy Code” is codified as Title 11 of the United States Code. The present Bankruptcy Code was enacted in 1978 and was last amended in 2005. Title 11 is currently divided into nine chapters: 1, 3, 5, 7, 9, 11, 12, 13, and 15. Chapters 1, 3, and 5, which give details about general provisions, case administration, creditors, the debtor, and the estate, apply in a case under chapter 7, 11, 12, or 13. Chapter 7 addresses liquidation, while chapter 11 deals with reorganization. Chapters 9, 12, and 13 concern the adjustments of debts of different groups of debtors: a municipality, a family farmer or fisherman with regular income, and an individual with regular income respectively. Lastly, chapter 15 involves cross-border insolvency cases (Blum 2010, 90-91; Warren and Westbrook 2008, 108).

Bankruptcy law has two principal goals. First, resolving the competing claims of multiple creditors by providing an equitable distribution of the debtor’s property among creditors, and, second, to provide the debtor with a financial “fresh start” by releasing the debtor from current liabilities (Becket and McNeal 2011, 3; Tabb 2009, 1). In consumer bankruptcy as opposed to business bankruptcy, the debtor chooses either straight liquidation through chapter 7 process or filing a repayment plan by way of chapter 13 procedure. In a chapter 7 case, all nonexempt properties of the debtor are seized and put up for auction. The

6 The term “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose (11 U.S.C. § 101(8) (2005)).
net proceeds are distributed to their creditors. In a chapter 13 case, an individual debtor agrees to repay his or her creditors a certain percentage of liabilities over a period of three to five years.

Thai bankruptcy law shares similar goals with the US. The purpose of bankruptcy litigation is to collect the property of the debtor by legal means for the maximum benefit of the debtor’s creditors (Supreme Court Decision No. 694/B.E. 2549 (2006 CE)). Nonetheless, reading through the statute and with particular note to the striking feature of having only the involuntary commencement of a bankruptcy case, Thai bankruptcy is perceived as a creditor collection system rather than a debtor relief procedure as in the US.

In each of the following topics, the US bankruptcy law is introduced first. Then, the contents of the relevant Thai bankruptcy procedures follow including comments about the similarities to or differences from the US counterpart.

II. Debtor Eligibility

A. US Bankruptcy Law

Only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under the Bankruptcy Code (11 U.S.C. § 109(a) (2005)). The term “person” includes individual, partnership, and corporation (11 U.S.C. § 101(41) (2005)). The debtor does not have to show that he or she is insolvent or provide any justification for bankruptcy filings (Blum 2010, 182).

There are two restrictions to qualify to be a debtor. First, to prevent serial filings by individuals and family farmer, a debtor cannot file for a bankruptcy relief if a debtor has been a debtor in a case pending under Bankruptcy Code at any time in the preceding 180 days if (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request
for relief from the automatic stay provided by section 362 of the Bankruptcy Code (11 U.S.C. §109(g)(1)-(2) (2005)). “Section 109(g)(2) is intended to make it difficult for a debtor to file consecutive petitions for the purpose of obstructing creditors’ collection efforts at state law by interrupting them with the automatic stay”(Blum 2010, 182).

The second restriction concerns the credit counseling requirement. An individual debtor must has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related analysis (11 U.S.C.§109(h)(1) (2005)). Exceptions to this requirement include: lack of available counseling agencies, exigent circumstances, and incapacity, disability, or active military duty in a military combat zone (see 11 U.S.C. § 109(h)(2)-(4) (2005)).

1. Dismissal of a Chapter 7 Consumer Case: The Presumption of Abuse and the “Means Test”

The court, on its own motion or on a motion by the United States Trustee, the bankruptcy trustee, or any party in interest, may dismiss a case filed by an individual debtor under chapter 7 whose debts are primarily consumer debts or, with the debtor’s consent, convert such a case to a case under chapter 11 or 13, if it finds that the granting of relief would be an abuse of the provisions of chapter 7 (11 U.S.C. § 707(b)(1) (2005)). The debtor is exempted from this test if majority of their debts are business-related.

The court shall presume abuse exists if the debtor’s “current monthly income”7 reduced by specified allowable expenses, and multiplied by sixty is not less than the lesser of:

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7 The term “current monthly income” means the average monthly income from all sources that the debtor receives without regard to whether such income is taxable income, derived during the six-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case. It includes any amount paid by any entity other than the debtor, on a regular basis for the household expenses of the debtor or the debtor’s dependents (11 U.S.C. § 101(10A) (2005)).
(1) 25 percent of the debtor’s non-priority unsecured claims in the case, or 7,025 USD, whichever is greater; or (2) 11,725 USD (11 U.S.C. § 707(b)(2)(A) (2005)). The presumption of abuse may only be rebutted by demonstrating special circumstances, such as serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative (11 U.S.C. § 707(b)(2)(B) (2005)).

In case the presumption does not arise or is rebutted, the court shall consider whether:

(A) the debtor files the petition in good faith; or  
(B) the totality of circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor’s financial situation demonstrates abuse (11 U.S.C. § 707(b)(3) (2005)). If one of the grounds mentioned above is founded, the court may dismiss or convert a case under chapter 11 or 13.

**B. Thai Bankruptcy Law**

To be eligible as a debtor under the Thai bankruptcy process, a debtor must be (1) insolvent and (2) must have a domicile in Thailand, or operate a business therein, whether the debtor conducts the business or has an agent conduct the business, at the time of commencement of a bankruptcy case or within one year prior to the commencement (Bankruptcy Act § 7 (2004)). For the Thai liquidation procedure, a debtor can be an individual, partnership, or company debtor.

Since Thailand has only involuntary commencement of a case seeking liquidation, to initiate a case a creditor has to show the insolvency of the debtor and the amount of debts that the debtor owes above the minimum threshold amount of indebtedness as designated by the law. Regarding the first condition, the creditor can satisfy this requirement by submitting proof that the sum of the debtor’s debts is greater than all of the debtor’s assets. If such evidence is difficult to provide, the creditor can instead indicate one of the nine...
“presumptions of insolvency” under section 8 of the Bankruptcy Act to meet the first criterion. The two most commonly used assumptions are if the debtor’s assets are seized or attached under a writ of execution or there is no asset of any kind capable of seizure or attachment for payment of the debts (Bankruptcy Act § 8(5) (2004)), or, if the debtor receives notices from a creditor at least two times thirty days apart and the debtor does not pay such debt (Bankruptcy Act § 8(9) (2004)). As information from the interviews reveals, civil case litigations almost always precede a bankruptcy lawsuit. The majority of the creditors cite the seizure or attachment of the debtor’s properties according to the writ of execution as an indication of insolvency by the debtor under section 8(5).

The second criterion concerns the minimum amount of indebtedness. To file a bankruptcy complaint against an individual debtor, such debtor must be indebted to one or several creditors amounting to not less than 1,000,000 THB (around 33,000 USD). If the debtor is a juristic person such as a partnership or company, such debtor must owe not less than 2,000,000 THB (about 66,000 USD). If the debtor owes less than the threshold amount, the creditor cannot pursue a bankruptcy case, but may decide to file a civil case instead.

There is no limitation on how many times a creditor can file a bankruptcy complaint against the same debtor as long as the creditor is owed a legitimate debt amounting to not less than the threshold amount. There is also no requirement for the debtor to go through a credit counseling program before starting the bankruptcy procedure.

III. Commencement of a Case

A. US Bankruptcy Law

In the US, a bankruptcy case can be commenced either by the debtor (voluntary cases) or by the debtor’s creditors (involuntary cases). A voluntary case is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor

8 For information about the interview methodology employed in this research, see pages 58-59.
under such chapter. The commencement of a voluntary case constitutes an order for relief under such chapter (11 U.S.C. § 301 (2005)).

An involuntary case may be commenced only under chapter 7 or 11, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced (11 U.S.C. § 303(a) (2005)). An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 (1) by three or more entities, if such noncontingent, undisputed claims aggregate at least 14,425 USD more than the value of any lien on property of the debtor securing such claims held by the holders of such claims (11 U.S.C. § 303(b)(1) (2005)). If the debtor has fewer than twelve creditors, only one creditor with the previously mentioned amount of claim is needed (11 U.S.C. § 303(b)(2) (2005)). If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. If the petition is contested by the debtor, the court can issue an order for relief only if (1) the debtor is generally not paying such debtor’s debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or (2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession (11 U.S.C. § 303(h) (2005)). In practice, involuntary bankruptcy cases are rare in the US.

The dollar amounts in the Bankruptcy Code including section 303(b) will be adjusted every three years to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor (11 U.S.C. § 104 (2005)). The above figure is the most recent adjustment took effect on April 1, 2010. The next adjustment will be made on April 1, 2013.
B. Thai Bankruptcy Law

Unlike the US, Thailand only has an involuntary bankruptcy system. The debtor cannot go to the court and declare bankruptcy. Rather, a creditor\(^9\) files a bankruptcy complaint against a debtor. There are slight differences between bankruptcy filing requirements by an unsecured creditor\(^{10}\) and a secured creditor.\(^{11}\) In order for an unsecured creditor to file a bankruptcy complaint, the debtor must be (1) insolvent; (2) indebted to the creditor for an amount of at least 1,000,000 THB (about 33,000 USD) if the debtor is an individual debtor or at least 2,000,000 THB (around 66,000 USD) if the debtor is a legal entity such as a partnership or a company; and (3) such debt is liquidated regardless of its maturity (Bankruptcy Act § 9 (2004)).

For a secured creditor, there are two additional requirements for filing a bankruptcy complaint. First, the secured creditor must have the right to recourse. Second, the liquidated claim must be for at least 1,000,000 THB if the debtor is an individual debtor or at least 2,000,000 THB if the debtor is a legal entity such as a partnership or a company more than the value of any lien on the property of the debtor securing such claim (Bankruptcy Act § 10 (2004)).

An additional requirement that arises from practices of bankruptcy judges is whether the creditor has already searched for assets of the debtor. Bankruptcy judges require that the creditor has undertaken certain investigations themselves that reveal the debtor to have no property and therefore need to pursue bankruptcy court procedures to examine the debtor’s current financial status. Clearly, this demand adds additional cost to the formulating of a bankruptcy complaint for the creditor as they need to present at least some evidence of asset

\(^9\) Although Thai creditors sometimes act in concert in bringing a bankruptcy case, for simplicity the text will use the singular form to refer to the creditor.

\(^{10}\) An unsecured creditor is a creditor who does not fall within the definition of a “secured creditor” (see below).

\(^{11}\) A “secured creditor” means the creditor holding rights over the asset of the debtor in a mortgage, pledge (a security interest in personal property) or a right of retention (a statutory lien including repairer’s lien), or a creditor possessing preferential rights in the nature of a pledge (Bankruptcy Act § 6 (2004)).
searching, usually from the Land Department, such as any land found to be in the ownership of the debtor, or the source of the debtor’s income. Only Bangkok has an online land-search system, meaning that if the debtor’s domicile is upcountry, the creditor has to file a request at the provincial land department office to get the requisite information. The creditor does not necessarily have to search whether the debtor owns any vehicle or not. If the creditor does not comply with this search requirement, its case is at risk of being dismissed on the ground that the debtor may still have assets that could service the debt.

Under Thai bankruptcy law, there is no consideration for the number of creditors as under section 303(b) of the US Bankruptcy Code. A Thai case can be instituted by one or more creditors, and the statute focuses on the amount of debt. Nevertheless, the Thai Bankruptcy Act does not have an equivalent provision to section 104 of the US Bankruptcy Code. The minimum threshold amount of indebtedness is not adjusted automatically every three years. This amount can be changed through the amendment of the Act which requires mandatory approval from the Thai parliament. This process takes considerable amount of time with the current threshold having been established in 1999. Since then, no alterations have been made for inflation.

To initiate a bankruptcy case, creditors mostly employ both in-house lawyers and outsourced attorneys with the amount of debt being the deciding factor in who does exactly what. Cases with low amounts of debt, such as less than five or ten million THB depending on each creditor’s policy, are handled by outside lawyers to fix the costs incurred to the creditors. The in-house counsel takes care of cases with higher amounts of debt.

Contents from interviews also reveal that most creditors have previously sued the debtor in a civil case before commencing a bankruptcy case. Since loans amounting in value

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12 Generally speaking, after a debt passes its due date by more than one month, this customer’s file is transferred to the debt recovery section. The debt collection procedures comprise: (1) calling, (2) issuing a collection letter, and (3) in-person meeting. Defaults in consumer lending generally involve the first two processes. Usually the lending division will contact the client first. Nevertheless, some financial institutions hire outside private
to more than 500,000 THB generally require collateral, after defaulting, creditors begin the foreclosure procedure by sending a letter of notification. After becoming a judgment creditor in a civil case, creditors put the collateral up for sale and receive the proceeds. In case there is a deficiency from the execution of the civil case judgment (presuming such amount exceeds, the threshold amount of 1,000,000 THB either at the time of judgment or later with accrued interest) creditors file a bankruptcy complaint against the debtor. In every case in which the remaining debt exceeds the minimum amount of required indebtedness, creditors almost always take the debtor to the bankruptcy court. Almost all interviewed financial institutions have similar policies. No one person or any particular groups of debtors are targeted for bankruptcy proceedings. The financial institutions’ litigation guidelines are decided upon by the board of directors.

Generally, the only cases where unpaid creditors do not initiate a bankruptcy case arise from procedural technicalities rather than the creditors’ choosing. For example, if an individual debtor had already passed away for more than a year before the creditor initiated the case, the right to sue in a bankruptcy case is forfeited (Bankruptcy Act § 82 (2004)). Also, asset management company creditors that purchased debt from other creditors cannot find sufficient evidence to prove the validity of their debt. In other cases, the debtor may be in negotiations with the financial institution regarding debt restructuring.

Over the past three years, bankruptcy judges have reported an increase in the number of creditors using non-judgment debt to commence a bankruptcy case. From the creditors’ perspective, there are two advantages of this practice. First, the legal fee for a bankruptcy collectors to do this job. If there is no response from a debtor, the legal division will send a legal notification of the legal consequences, e.g. termination of contract or foreclosure. In many instances, the debtor and the creditor are able to restructure their debt. All financial institutions have tried to collect every defaulted debt without exception. Nonetheless, the decision to file a civil complaint against a debtor depends on the defaulted amount. If the amount is less than 100,000 THB, some institutions will keep collecting without instituting the cases due to litigation cost considerations. When the disputed amount is more than 100,000 THB, after 180 days past the due date, creditors file a civil case against the debtor.
case is much cheaper than a civil case. Second, it saves time for the creditor in enforcing their right. In a bankruptcy case, creditors have the same rights as in a civil case in the seizure or attachment of the debtor’s properties, selling the debtor’s assets, and receiving the proceeds. However, the bankruptcy judges usually exercise much more scrutiny in the authentication of such debt because, for one thing, such liability has not yet passed muster at any court of law. The disputed issue raised with this type of debt is the liquidation of such debt. In many instances for these non-judgment debts, after hearings, the judges dismiss the cases.

On the hearing date, if the creditor can prove that the debtor is insolvent, is indebted to not less than the threshold amount, and the debt is liquidated, the bankruptcy court will issue an “absolute receivership” order. However, if the debtor can rebut any of the elements or can prove that he or she has an ability to pay these debts, the court will dismiss the case (Bankruptcy Act § 14 (2004)). An absolute receivership order is not a bankruptcy judgment. The debtor’s status is not changed to a bankrupt until the court issues a bankruptcy judgment.

13 The bankruptcy case fee is a fixed rate at 500 THB (around 16.7 USD) regardless of the total amount of debt litigated (Bankruptcy Act § 179(1) (2004)) while the civil case fee is 2 percent of the disputed amount, but will not exceed 200,000 THB if the total disputed amount is no more than fifty million THB. The court charges 0.1 percent of any disputed amount more than fifty million THB (Table 1 Court Fee attached to the Thai Civil Procedure Code (1935)).

14 Many readers may wonder why a creditor has to start a civil case before a bankruptcy case if there is no legal requirement to do so and both procedures result in the same execution process. All creditors agree that they go through a civil case remedy first because the civil procedure takes less time than the bankruptcy one counting from the start of the case filing until the sale of the collateral. With a bankruptcy case, after the issuance of the receivership order, creditors have to wait for two-month period for filing a proof of claim to lapse (Bankruptcy Act § 91 (2004)), the creditors’ meeting (Bankruptcy Act § 31 (2004)), the public examination of the debtor at the court (Bankruptcy Act § 42 (2004)), and the adjudication of the debtor (Bankruptcy Act § 61 (2004)) before the sale of the debtor’s property can start. In short, the creditors receive their repayment in a civil case sooner than in a bankruptcy case. Also, a civil case usually involves just a creditor and a debtor, while in a bankruptcy case, sometimes there is more than one creditor.

15 “Receivership” means both temporary receivership and absolute receivership (Bankruptcy Act § 6 (2004)). The creditor may ask the court for temporary receivership while the case is pending for hearing whether the court will issue an absolute receivership order or dismiss the case (Bankruptcy Act § 17 (2004)). The temporary receivership will prohibit any act of the debtor that may lessen the value of the debtor’s assets. Nonetheless, the usage of temporary receivership request is rare. From this point on, I will refer to an absolute receivership as receivership.

16 The court will adjudicate a debtor a bankrupt when the debtor does not file a repayment plan, the plan does not get approval from the creditors’ meeting, or the plan does not get confirmation from the court (Bankruptcy Act § 61 (2004)).
From interviews with bankruptcy judges regarding bankruptcy litigation, at least 70 percent of the debtors did not file an answer. Among those who did almost all did so with the help of lawyers; the majority of them came to request the court for more time to settle the suit with the creditor. The typical arguments for debtors who wanted to contest the case were: (1) the debtor did not owe the creditor anything; (2) the disputed amount of debt was miscalculated or the correct amount of debt did not exceed the minimum threshold amount; (3) the collateral had much more value than that which was received from the public auction, therefore after subtracting the outstanding debt by the actual value of the collateral, the debt was no longer greater than the threshold amount; (4) the creditor did not exercise its right to file a case or execute it according to the civil-case judgment within the statute of limitation; (5) the transfer (selling) of the debt from the old creditor to the new one is not legal; (6) the debtor still has assets or the capacity to repay their debt; and (7) there are other people such as the debtor’s grown-up children, relatives, or friends who can help and are willing to pay off the debtor’s liabilities.

Rarely does a debtor win the case by an issuance of a dismissal order by the court. Only in a case wherein the debtor can demonstrate the existence of their property by

17 All financial institutions have a policy stating that they are willing to discuss debt restructuring with a debtor at any time, no matter how far along the case procedure has gone. At any time before entry of the receivership order, the creditor is willing to negotiate with the debtor albeit with varying agreeable conditions depending on each individual’s circumstances. For instance, before the start of the civil case, the adjusted repayment period may not be longer than the statute of limitation of such claim. The new repayment schedule for the judgment debtor to repay their debt will not exceed ten years, a statute of limitation for the execution of a judgment. The details of a debt restructuring plan might include (1) a moratorium on the payment of interest or principal for a short period of time, (2) a one-time lump sum cash settlement through asset selling, borrowing money from relatives, or refinancing, (3) an adjustment of the original loan regarding the amount paid for each installment and the new extended period with or without a guarantor, or (4) replacing the original debtor with a person who has repayment capacity, e.g. grown-up working child. In considering the debt restructuring plan, all financial institutions take into account the causes of default which may indicate whether the debtor is honest or not and the capacity of the debtor. To have the debt restructuring plan approved, it has to go through various levels of scrutiny depending on the amount of debt from the responsible officer, his or her supervisor, to the in-charge committee which usually consists of three or more individuals. Needless to say, if there is no hope of coming to terms with the debtor, the creditor will pursue civil case litigation. A debt restructuring deal after the initiation of the civil case is slightly different in terms of the form of an agreement. Usually, creditors prefer to sign a compromise agreement with the debtor with the court’s sanction rather than an out-of-court settlement and creditors withdraw their complaints. The reason being that if the debtor breaches the compromise agreement, the creditor can seize or attach the property of the debtor right away. In case of complaint withdrawal, the creditors have to process the case starting from square one again.
producing, for example, a land deed or a bank account showing a cash balance can the court dismiss the case. Even though the debtor “wins” these bankruptcy cases, the creditor now knows where to find the debtor’s assets to repay their debt.

If the debtor wants to negotiate with the creditor, the judges usually asks the creditor to have all their witnesses testify on the hearing date. Then, the court asks the debtor not to contest the creditor’s testimony. The judge thus pronounces the conclusion of the hearing and the adjudication is postponed pending the outcome of the debtor-creditor negotiation. The adjournment normally takes three months. This practice is partly because section 13 of the Bankruptcy Act states that a bankruptcy case must be processed in an expedited manner. A postponement is permitted depending on the progress of the talk and the possibility that the debt restructuring agreement can be reached. Most judges permit no more than one year of negotiating. This restriction is partly because if a case in the judge’s hands is not finalized within a year, it will affect the evaluation of that judge’s performance. Finally, it is worth noting that the debtor usually employs a lawyer in their dealings with the creditor.

IV. Property of the Estate

A. US Bankruptcy Law

The commencement of a case under section 301 (voluntary cases) or section 303 (involuntary cases) creates an estate (11 U.S.C. § 541(a) (2005)). In general, such estate is comprised of (1) all legal or equitable interests of the debtor in property as of the commencement of the case, (2) all interests of the debtor and the debtor’s spouse in community property as of the commencement of the case, (3) any interest in property that the trustee recovers by exercising the trustee’s avoidance power or other specified sections, (4) any interest in property preserved for the benefit of or ordered transferred to the estate, (5) any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor
acquires or becomes entitled to acquire within 180 days after such date (A) by bequest, devise, or inheritance; (B) as a result of a property settlement agreement with the debtor’s spouse, or of an interlocutory or final divorce decree; or (C) as a beneficiary of a life insurance policy or of a death benefit plan, (6) proceeds, product, offspring, rents, or profits of or from property of the estate, (7) any interest in property that the estate acquires after the commencement of the case (11 U.S.C. § 541(a)(1)-(7) (2005)). The excluded properties include earnings from services performed by an individual debtor after the commencement of a case (11 U.S.C. § 541(a)(6) (2005)).

1. Exemptions

An individual debtor may exempt certain assets from the “property of the estate.” Section 522 provides uniform federal exemption. Nonetheless, “the exemption to which a debtor is entitled will vary depending on the state of the debtor’s domicile. In some states, a debtor has a choice between two exemption schemes: federal and state. In other, the “opt-out states,” a debtor may only use state exemptions (Becket and McNeal 2011, 31).

The domicile state of the debtor is the place in which the debtor’s domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor’s domicile has not been located at a single State for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place (11 U.S.C. § 522(b)(3) (2005)). “This provision makes it very difficult for a debtor to move to a hospitable state for the purpose of enhancing her exemptions” (Blum 2010, 305-06).

Section 522(d) lists twelve types of property that may be exempted, e.g. the debtor’s aggregate interest, not to exceed 21,625 USD in value, in real property or personal property that the debtor or a dependent of the debtor uses as residence, the debtor’s interest, not to exceed 3,450 USD in value, in one motor vehicle, the debtor’s aggregate interest, not to
 exceed 2,175 USD in value, in any implements, professional books, or tools, of the trade of the debtor, professionally prescribed health aids for the debtor, and so forth. Section 522(d)(5) is the “wildcard exemption” which the debtor can use the amount specified to any property of his or her choices.

**B. Thai Bankruptcy Law**

After acknowledging the receivership order, the debtor shall deliver all the assets, seals, accounting ledgers, and documents relating to his or her assets and business in his or her possession to the bankruptcy trustee (Bankruptcy Act § 23 (2004)).

Under section 109 of the Bankruptcy Act, the bankruptcy estate of a debtor includes (1) all assets belonging to the debtor as from the beginning of the bankruptcy, including all rights over any assets of third parties, except: (a) personal and necessary effects that the debtor, his or her spouse and his or her minor children reasonably require in accordance with their condition in life, and (b) livestock, seeds, implements, professional books, or tools, of the trade of the debtor, not exceeding 100,000 THB in value, (2) assets acquired by the debtor subsequent to the beginning of the bankruptcy proceedings and up to the date of his or her discharge from bankruptcy and (3) items in the possession or disposition of the debtor in the course of the trade or business of the debtor by the consent of the true owner under circumstances which create the impression that the debtor is the owner at the time of the creditor’s bankruptcy filing.

The term “the beginning of the bankruptcy” in section 109 needs further clarification. The beginning of the bankruptcy takes effect from the date on which the court orders the debtor to be under a receivership order rather than the date on which the creditor files a bankruptcy complaint (Bankruptcy Act § 62 (2004); Supreme Court Decision No. 1836/B.E.2524 (1981 CE)).
In the US, generally speaking, distributable assets are those that a debtor owns at the time of filing. Therefore, an individual debtor can keep his or her earnings from services performed after the commencement of the case (11 U.S.C. § 541(a)(6) (2005)). However, in Thailand, all debtors’ assets as of the issuance of receivership order are property of the estate. Moreover, any assets that the debtor obtains during the period from the issuance of the receivership order until a discharge from bankruptcy are also the property of the estate. The Thai trustee has a longer period than the US counterpart to collect the debtors’ assets, resulting in potentially higher returns for creditors. The Thai “fresh start” policy occurs only after the debtor gets discharged from bankruptcy – for the individual this is generally after spending three years as a bankrupt (Bankruptcy Act § 81/1 (2004)).

One striking difference in terms of the exempted property list is that according to section 109(1)(a) and (b), Thai debtors are not entitled to homestead or motor vehicle exemptions. The debtor’s real property and car are foreclosed and sold. All proceeds are then distributed to the creditors. Another point of contrast is the fact that in Thailand the Bankruptcy Act provides uniform bankruptcy exemptions. Section 109 of the Thai Bankruptcy Act provides a standardized set of exemptions applicable to all debtors in the country. Thailand does not have the two sets of exemptions the US has (federal and state) because Thailand is a single state.

In practice, the job of gathering a debtor’s assets in Thailand involves the collaboration between a trustee and a creditor. The trustee is the first person to acquire knowledge of the debtor’s assets through the financial examination of the debtor, taking place after the court issues a receivership order. From the examination, the trustee will know where the debtor works and whether the debtor has deposits in any banks. If the debtor has a job or a bank account, a garnishment letter will be sent to the debtor’s current employer and the bank to collect such money. If the debtor has a car, a letter will be provided to the Land
Transportation Department not to allow any transaction regarding the debtor’s car. The trustee usually will not enter any premises of the debtor to find assets even though they have the power to do so. As concerns personal property, it is very difficult to identify which assets belong to the debtor. The trustee is also at risk of disciplinary or criminal complaints arising from such actions. Thus, aside from the financial examination, the trustee generally takes on a more passive role in searching for the additional properties of the debtor. Creditors then come into play.

Usually assets that are found are those with proof of registration. The creditors search through the provincial land department office to uncover whether the debtor has a domicile or else they go through the Land Transportation Department’s database. One creditor even hired a private asset-searching company in this regard. In the case of secured creditors, this is very clear because they have to inform the trustee about their collateral and allow the trustee to check the condition of the security. In case there is a pending execution of judgment in the civil case, the relevant parties need to supply the trustee with the latest information about such a procedure. After verifying the validity of the assets, the trustee will do the necessary paperwork to bring such property into the estate of the debtor or ask the executing officer to send proceeds from the sale to the trustee.

Interestingly at some commercial banks and life insurance companies, they have a unit which regularly checks announcements of receivership orders in the Government Gazette. If they find that debtors who are placed under receivership order have deposit accounts or life insurance with the banks or the companies, they will close the accounts and send the money or the remaining balance in the insurance policy to the bankruptcy trustee even if these banks and companies are not creditors in the case in question.

The mechanism of collecting the debtor’s assets by the cooperation of the trustee and the creditor looks promising, but the reality of recovering assets other than the collateral is
rare. Senior bankruptcy trustees commented that current financial examination these days was not as rigorous as in the past. The young trustees just ask the debtor standardized questions without further inquiring into answers that lack clarity. For example, when the debtor replied that they did not have any work prior to the bankruptcy filing, the trustee may write down “no occupation” without asking the debtor how they were able to get a loan in such a large amount in the first place. The current trustees’ response to this issue was that, with the current workload, it is impossible to dig into that much detail as used to be the normal practice. More importantly, their key work performance indicator stresses the number of closed cases rather than the distribution percentage in each case. In addition, the trustees were of opinion that the attorneys representing creditors other than the secured creditor were not very keen in helping find more assets. Rather, they want to see the bankruptcy judgment or the closing order by the court so that they can receive the last portion of the legal fees.

Another significant issue related to the debtor’s asset discovery is whether the debtor provides the whole truth about property during the financial examination by the trustee. The real intent of the debtor may never be fathomed. Nevertheless, many trustees have opined that the debtor with bankruptcy law knowledge, most of them businessmen, usually did not tell all the truth about their assets. They may learn by themselves or from friends or relatives about the consequences of seizure or garnishment of their assets if they do tell the trustee about them. In contrast, debtors without a high school diploma, usually farmers and fishermen, furnished all information of their assets.

Furthermore, in a small number of cases, the debtor came to meet the trustee with a lawyer, usually in a case involving a high amount of debt. Nevertheless, in the majority of cases, the debtor came to the financial examination without any assistance of counsel. It is worth noting that there is no requirement for lawyer presence or participation during the financial examination. Regarding cases with the debtor’s lawyer, these attorneys play a part
in the completeness of the information. From the experience of trustees, the debtors who came to meet the trustee alone provided more truthful statements of their assets than those who came with lawyers. In the latter case, generally the debtor’s lawyer had already told the debtor before the examination to tell the trustee that they had no assets. Many debtors would consult their lawyers before answering a question posed by the trustee, or the lawyers signaled the debtor to stop when the debtor provided too much information (e.g., giving a stern look at the debtor or kicking the debtor’s leg). The trustee later ascertained the whole truth when they found the assets themselves or through the creditors.

V. The Automatic Stay

A. US Bankruptcy Law

In the US, the filing of a bankruptcy petition operates as a stay, applicable to all entities. The stay prohibits (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case, or to recover a claim against the debtor that arose before the commencement of the case; (2) the enforcement, against the debtor or against the property of the estate, of a judgment obtained before the commencement of the case; (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against the property of the estate; (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case; (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case; (7) the setoff of any debt owing to the debtor that arose before the commencement of the case against any claim against the debtor; and (8) the commencement or continuation of

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18 The term “entity” includes person, estate, trust, governmental unit, and United States trustee (11 U.S.C. § 101(15) (2005)).
a proceeding before the United States Tax Court concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief (11 U.S.C. § 362(a)(1)-(8) (2005)).

There are many exceptions to the automatic stay. For example, the operation of the automatic stay does not include the commencement or continuation of a criminal action or proceeding against the debtor, the commencement or continuation of a civil action or proceeding for the establishment or modification of an order for domestic support obligations, the collection of a domestic support obligation from property that is not property of the estate, the withholding, suspension, or restriction of a driver’s license, a professional or occupational license, any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case to obtain possession of such property (11 U.S.C. § 362(b) (2005)).

Regarding the consequence of any act taken in violation of the automatic stay, most courts have ruled that such action is void, therefore incurable and without effect while the minority holds that such act is voidable and capable of discretionary cure. In the latter case, the debtor has to take an affirmative action to invalidate the act (Becket and McNeal 2011, 114-15; Blum 2010, 258; Tabb 2009, 246). In general, (1) the stay of an act against property of the estate continues until such property is no longer property of the estate; and (2) the stay of any other act continues until the earliest of (A) the time the case is closed; (B) the time the case is dismissed; or (C) if the case is a case under chapter 7 concerning an individual, the time a discharge is granted or denied (11 U.S.C. § 362(c)(1),(2) (2005)).

B. Thai Bankruptcy Law

In Thailand, the bankruptcy filing by the creditor does not constitute an automatic stay. Rather, the Thai equivalent procedure to the US “automatic stay” happens when the
court issues a receivership order. As a consequence of a receivership order, any creditor cannot commence or continue bankruptcy or civil case proceedings against the debtor. The enforcement of a judgment obtained before the issuance of the receivership order and any act to obtain possession of property of the estate are also prohibited. Any creditors of the debtor who would like to receive a repayment must file a proof of claim within the time designated by the law (Bankruptcy Act §§ 15, 26, 27 (2004)).

Additional effects of the receivership order include restrictions on the debtor taking actions to dispose of assets or operate a business without an order or approval from the court, the bankruptcy trustee, the administrator of the asset, or of a meeting of creditors (Bankruptcy Act § 24 (2004)). The bankruptcy trustee shall only have the following powers: (1) to manage and dispose of the assets of the debtor, or perform any necessary act to complete any pending business of the debtor; (2) to collect and receive money or assets belonging to the debtor, or which the debtor is entitled to receive from others; (3) to compromise, come to a settlement, or file actions, or defend actions, relating to the assets of the debtor (Bankruptcy Act § 22 (2004)).

Like its U.S. counterpart, the Thai automatic stay does not prohibit a debtor from carrying out all activities. The debtor is allowed to appeal a court order regarding the allowance of the creditors’ claims, a receivership order, any judgment or order in a civil case related to a bankruptcy case, to a higher court (The Act for the Establishment of and Procedure for Bankruptcy Court § 24(3)-(5) (1999). The debtor can file a criminal trespass lawsuit against the offender if no monetary damages are sought (Supreme Court Decision No. 3902/B.E. 2549 (2006 CE)).

Any transaction which violates the Thai automatic stay (the violation of sections 22 and 24 of the Bankruptcy Act) is void. Such deals cannot be legally enforced by both parties (Supreme Court Decisions Nos. 3169/B.E. 2531 (1988 CE) and 1897/B.E. 2530 (1987 CE)).
The automatic stay provisions are in effect until the discharge from bankruptcy, the termination of a bankruptcy case, or the court's confirmation of the repayment plan.

VI. Creditors, Claims and Distribution of Property of the Estate

A. US Bankruptcy Law

A creditor is an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor” (11 U.S.C. § 101(10)(A) (2005)). Generally speaking, there are two types of creditors: a secured creditor and an unsecured creditor. A secured creditor has a “charge against or interest in property to secure payment of a debt or performance of an obligation (11 U.S.C. § 101(37) (2005))”. A secured creditor is the sole beneficiary of the value of the collateral up to the amount designated in the security interest agreement. An unsecured creditor is an ordinary creditor which has no exclusive right or priority of repayment over the debtor’s property. Unsecured creditors receive pro rata share among themselves of the debtor’s assets less value of the collateral.

A claim is “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.” It also means “right to an equitable remedy for breach of performance if such breach gives rise to a right to payment” (11 U.S.C. § 101(5) (2005)). A creditor may file a proof of claim (11 U.S.C. § 501(a) (2005)). A claim is deemed allowed, unless a party in interest objects. If such objection to a claim is made, the court shall determine the amount of such claim as of the date of the filing of the petition with some exceptions (11 U.S.C. § 502(a)(b) (2005)).

1. Secured Creditor

In determining secured status, an allowed claim of a secured creditor is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property and is an unsecured claim to the extent that the value of such creditor’s interest is
less than the amount of such allowed claim (11 U.S.C. § 506(a) (2005)). Such value shall be
determined in light of the purpose of the valuation and of the proposed disposition or use of
such property. If the debtor is an individual in a case under chapter 7 or 13, such value with
respect to personal property securing an allowed claim shall be determined based on the
replacement value of such property as of the date of the filing of the petition. Replacement
value shall mean the price a retail merchant would charge for property of that kind
considering the age and condition of the property at the time value is determined (11 U.S.C. §
506(a) (2005)). To the extent that an allowed secured claim is secured by property the value
of which is greater than the amount of such claim, there shall be allowed to the holder of such
claim, interest on such claim (11 U.S.C. § 506(b) (2005)).

2. The Claim Process

An unsecured creditor must file a proof of claim for the claim to be allowed.19 In a
chapter 7 liquidation or chapter 13 individual’s debt adjustment case, a proof of claim is
timely filed if it is filed not later than ninety days after the first date set for the meeting of
creditors called under section 341(a) of the Bankruptcy Code with some exceptions (Fed. R.
Bankr. P. 3002). A secured creditor does not necessarily need to file a proof of claim because
the lien survives bankruptcy discharge. However, if such creditor is undersecured,
the creditor has to file a proof of claim to get distribution from the debtor’s assets (11 U.S.C.

3. Distribution of Property of the Estate

The secured creditor is the first to receive the assets of the debtor either in form of
collateral or cash value up to the amount of the collateral. Then among unsecured creditors,
there are those who have priority claims before the general unsecured creditors as stipulated
in section 507(a)(1)-(10) (11 U.S.C. § 726 (2005)). These priority claims are typically claims

19 In chapter 11, a claim is deemed filed if the debtor lists the claim on the bankruptcy schedules filed at the
favored for different policy reasons, such as domestic support obligations, administrative expenses of running the bankruptcy case, unsecured claims for contributions to an employee benefit plan, certain tax claims, and so forth. Priority claims are paid according to their order in section 507(a)(1)-(10). Nonetheless, there is one exception to this rule. Administrative expenses, which is in the second priority, will be paid before domestic support obligations, “to the extent that the trustee administers assets that are otherwise available for the payment of” domestic support obligations (11 U.S.C. § 507(a)(1)(C) (2005); Tabb 2009, 675-76). The general unsecured creditors receive what has been left equally.

B. Thai Bankruptcy Law

In Thailand, there are two types of creditors: secured and unsecured. A “secured creditor” is defined in section 6 of the Bankruptcy Act as the creditor holding rights over the assets of the debtor in a mortgage, pledge or a right of retention, or a creditor possessing preferential right in the nature of a pledgee. Any creditor who does not fall within the definition of a secured creditor is deemed an unsecured creditor. It is worth noting that in the beginning the filing of a proof of claim by either an unsecured creditor or secured creditor almost always involved the assistance of the lawyers.

1. The Claim Process

When the court issues an absolute receivership order, a creditor may ask for repayment of its debt only by filing a proof of claim with a bankruptcy trustee within two months following the date of publication of an absolute receivership order in the Government Gazette and in at least one daily newspaper. An unsecured creditor must file a proof of claim regardless of its status as a petitioning creditor, a judgment creditor, or a creditor who has filed a civil action and the case is pending (Bankruptcy Act §§ 27, 28, 91 (2004)).

If a creditor does not file a claim within the specified timeframe, the creditor will not receive any dividend from the property of the estate. After the debtor gets a discharge,
creditors that did not file claims cannot start or continue any action to collect and recover any such debt as a personal liability of the debtor (Supreme Court Decision No. 1808/B.E. 2512 (1969 CE)).

A secured creditor has a choice of filing a proof of claim. If it chooses not to file, it will be entitled to the collateral (Bankruptcy Act § 95 (2004)). If there is an election to file, after the sale of the collateral, the secured creditor is entitled to any deficiency as an unsecured creditor (Bankruptcy Act § 96 (2004)). Therefore, the operation of section 96 of the Thai Bankruptcy Act is somewhat similar to section 506 of the US Bankruptcy Code.

Another additional requirement for filing a proof of claim for both unsecured and secured creditors is that their claims must have arisen before the date on which the court orders receivership of the asset, even if such debt may be unmatured or contingent (Bankruptcy Act § 94 (2004)). Thai bankruptcy law uses the event of issuing a receivership order as a cut-off dateline for eligibility to file a proof of claim, as opposed to the act of filing a bankruptcy petition in US bankruptcy law. As a result, any claim occurring after the date of receivership order cannot be filed for repayment from the property of the estate.

In addition to that, the chance for the debtor to incur any obligations after the issuance of a receivership order is slim anyway. After the court issues a receivership order, it is prohibited for the debtor to engage in any act relating to his or her assets, or his or her business, except when such act shall be done by order or approval of the court, the trustee, the administrator of the asset, or of a creditors’ meeting (Bankruptcy Act § 24 (2004)). Any transaction in contrary to this provision is void.

2. Allowance of Claims or Interest

Upon expiry of the two months following the date of publication of an absolute receivership order, the trustee shall fix a date for a meeting of the debtor and all creditors to examine the proofs of claims (Bankruptcy Act §104 (2004)). Where no objection is made
against any claim by the debtor, creditor, or trustee, the court may order the allowance of the repayment of a claim (Bankruptcy Act § 106 (2004)). If there is any objection, the court shall conduct a hearing thereof and issue any of the following orders: (1) dismiss the claim; (2) allow the claim in whole; or (3) allow the claim in part (Bankruptcy Act § 107 (2004)).

Even if no interested party objects to a claim, the claim is not deemed allowed by the operation of law as in section 502(a) of the US Bankruptcy Code. The court still has to issue an allowance order concerning the repayment of such claim.

3. Distribution

Proceeds from the sales of the property of the estate shall be distributed first for the administrative expenses such as the expenses of the trustee in managing the debtor’s assets, fees in collecting and selling the debtor’s assets, and fees of the petitioning creditor and lawyer (Bankruptcy Act §§ 124, 130, 179 (2004)). After deducting the administrative expense, the secured creditor is next in line to receive its share up to the amount received from the public auction of the collateral. The remaining proceeds are distributed pro rata among unsecured creditors.

VII. Discharge

A. US Bankruptcy Law

Only an individual debtor gets a discharge under chapter 7 liquidation; debtors who are partnership or company do not get a discharge (11 U.S.C. § 727(a)(1) (2005)).

1. Timing

In the US, chapter 7 liquidation does not specify exactly when the debtor will get discharge. On expiration of the times fixed for objecting to discharge, the court shall grant the discharge (Fed. R. Bankr. P.4004(c)(1)). In a chapter 7 case, a complaint or a motion objecting to the debtor’s discharge shall be filed no later than sixty days after the first date set for the meeting of creditors under section 341(a) (Fed. R. Bankr. P. 4004(a)). Within
a reasonable time after the order for relief in a case, the United States trustee shall convene and preside at a meeting of creditors (11 U.S.C. § 341(a) (2005)). In a chapter 7 liquidation, the United States trustee shall call a meeting of creditors to be held no fewer than twenty and no more than forty days after the order for relief (Fed. R. Bankr. P. 2003(a)). The trustee, a creditor, or the United States trustee may object to the granting of a discharge (11 U.S.C. § 727(c)(1) (2005)). Typically, the chapter 7 discharge occurs about “four months after the date the debtor files the petition with the clerk of the bankruptcy court (Administrative Office of the U.S. Courts 2011, 9).” If there is an objection, the discharge period may be prolonged.

2. Effect of Discharge

Under chapter 7 liquidation, a discharge discharges the debtor from all debts that arose before the date of the order for relief whether or not a proof of claim based on any such debt or liability is filed and whether or not a claim based on any such debt or liability is allowed (11 U.S.C. § 727(b) (2005)). Since almost all chapter 7 cases commence voluntarily, the date of the order for relief is the date the debtor files a bankruptcy petition.

A discharge voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 (11 U.S.C. § 524(a)(1) (2005)). In addition, a discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor (11 U.S.C. § 524(a)(2) (2005)).

a. Non-dischargeable Debts

There are some types of individual debts that the debtor does not get discharge, meaning that the debtor is still liable for these debts after the discharge from bankruptcy. Non-dischargeable debts include debt for a tax or a customs duty, debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false
pretenses, a false representation, or actual fraud, unlisted or unscheduled debt, debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny, debt for a domestic support obligation, debt for willful and malicious injury by the debtor to another entity or to the property of another entity, or debt for qualified educational loan, and so forth (11 U.S.C. § 523 (2005)).

b. Denial of Discharge

Grounds that bar the debtor from receiving a discharge for any debt include the debtor transferring or concealing property with the intent to hinder, delay, or defraud a creditor and within one year before the date of the filing of the petition, the debtor’s concealment or falsification of financial record, the debtor’s loss of assets without satisfactory explanation, or the debtor’s grant of a discharge under section 727 in a case commenced within eight years before the date of the filing of the petition, and so forth (11 U.S.C. § 727(a) (2005)). If one of the denial grounds is found, the debtor’s liabilities are not discharged.

3. The Prohibition against Discrimination

A governmental unit may not (1) deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant again, (2) deny employment to, terminate the employment of, or discriminate with respect to employment again, a person that is or has been a debtor under the bankruptcy law solely because such bankrupt or debtor is or has been a debtor in the bankruptcy case (11 U.S.C. § 525(a) (2005)). Also, no private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under the bankruptcy law because such debtor or bankrupt is or has been a debtor under the bankruptcy law (11 U.S.C. §525(b) (2005)). Lastly, a government unit that operates a student grant or loan program may not deny a student grant or loan to a person that
is or has been a debtor or a bankrupt in the bankrupt case because the debtor or bankrupt is or
has been a debtor under the bankruptcy process (11 U.S.C. § 525(c) (2005)).

4. Revocation of Discharge

The court shall revoke a discharge under section 727(a) if requested by the trustee, a creditor, or the United States trustee. The reasons for revocation include such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge, the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee, or the debtor has failed to explain satisfactorily a material misstatement in an audit or a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit (11 U.S.C. § 727(d) (2005)). Nonetheless, a revocation of a discharge’s request must be submitted to the court within one year after such discharge is grant; or before the later of one year after the granting of such discharge and the date the case is closed (11 U.S.C. §727(e) (2005)).

5. Reaffirmation and Redemption

a. Reaffirmation

If an individual debtor’s schedule of assets and liabilities includes debts which are secured by property of the estate, within thirty days after the date of the filing of a petition under chapter 7 or on or before the date of the meeting of creditors, whichever is earlier, the debtor shall file with the clerk a statement of his or her intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property (11 U.S.C. § 521(a)(2) (2005)).
The reaffirmation agreement between the debtor and the creditor makes involved dischargeable debts enforceable again. But such agreement must be made before the granting of the discharge (11 U.S.C. §524(c) (2005)).

b. Redemption

An individual debtor may redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 or has been abandoned under section 544, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption (11 U.S.C. § 722 (2005)).

B. Thai Bankruptcy Law

In Thailand, the bankrupt may be discharged from bankruptcy in one of two ways. The court orders a discharge according to section 71 of the Bankruptcy Act or the period under section 81/1 has lapsed.

Under section 71, the court shall give a discharge when the court finds that not less than 50 percent of the creditor’s claims have been paid and that the debtor is an honest bankrupt. Discharge under section 71 is rarely used, however, because in a typical consumer bankruptcy case, the debtor does not have any assets.

In almost all consumer bankruptcy cases, the debtor gets discharged automatically by operation of law under section 81/1. An individual debtor adjudged to be bankrupt shall be discharged from bankruptcy immediately upon the lapse of three years from the date the court adjudged him or her bankrupt (Bankruptcy Act § 81/1 (2004)). This provision only applies to individual debtors and not to partnership or company debtors.

1. Effect of Discharge

A discharge releases the debtor from all debts that arose before the date the court issues a receivership order (Bankruptcy Act §§ 77, 94 (2004)). There are only two kinds of
non-dischargeable debts in Thai bankruptcy law: tax debts and debts which arose through the dishonesty or fraud of the bankrupt, or debts for which creditors did not file a proof of claims owing to dishonesty or fraud to which the bankrupt is a party.

Although not expressly stated in the Bankruptcy Act, the Thai Supreme Court has long upheld that a discharge voids any judgment to the extent that such judgment is a determination of the personal liability of the debtor. Thus, by judicial interpretation, the Thai bankruptcy law operates in a similar way on this point to section 524 of the US Bankruptcy Code. Also, a discharge in Thai bankruptcy operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor. Finally, like US law, a Thai bankruptcy law does not discharge the lien that a secured debtor has.

2. Exceptions to Discharge

Unlike section 727 of the US Bankruptcy Code, there is no specific ground for denial of a discharge under Thai bankruptcy law. However, there are circumstances which may extend the discharge period. The discharge period could be extended to five years in case of repeat bankruptcy within the last five years. It could be extended to ten years in the case of a dishonest bankrupt (Bankruptcy Act § 81/1(1)-(3) (2004)). Furthermore, if the debtor does not submit the lists of assets and liabilities, does not attend the creditors’ meeting, does not attend court’s hearing, or fails to cooperate with the trustee in collecting the debtor’s assets, the discharge time is extended to five years (Bankruptcy Act §§ 81/2, 81/3 (2004)).

3. Prohibition against Discrimination

In Thailand, there is no prohibition against discrimination as concerns bankruptcy as appears in section 525 of the US Bankruptcy Code. As a matter of fact, under the relevant Acts and regulations, if the debtor is a government official, a teacher, or an employee in some state-owned organizations, they will be disqualified from their jobs if he or she is adjudged
a bankrupt. This is a subject of hot debate in Thailand. On the one hand, the rationale behind removal is that the act of going bankrupt indicates that the debtor cannot look after his or her own financial affairs. Therefore, the debtor loses his or her credibility to hold a government position which is supposed to require the utmost responsibility. On the other hand, removing the debtor from their job benefits no one. Indeed, the debtor loses income, thereby inevitably affecting the repayment to creditors and the welfare of the debtor’s entire family.

4. Revocation of Discharge

The grounds for revocation of discharge under Thai bankruptcy law is somewhat similar to subsection 727(d)(2) and paragraph 727(d)(4)(B) of the US Bankruptcy Code. The court may revoke a discharge if the bankrupt does not assist the trustee in selling and distributing the debtor’s assets which the trustee may require (Bankruptcy Act § 79 (2004)).

5. Reaffirmation and Redemption

There are no equivalent provisions concerning reaffirmation (11 U.S.C. § 524(c) (2005)) and redemption (11 U.S.C. § 722 (2005)) under the Thai Bankruptcy Act. However, a debtor can always repay a creditor voluntarily after bankruptcy.

VIII. Chapter 13 Individual Debt Adjustment as Compared to Thai Repayment Plan

A. Overview

Chapter 13 adjustment of debts of an individual with regular income\(^{20}\) or “wage earners’ plan” provides an opportunity for an individual with stable income to propose a debt repayment plan over a period of between three to five years depending on the income of the debtor. The debtor is able to keep all of his or her assets but has an obligation to pay the existing liabilities according to the confirmed plan from his or her estate including the future earnings. After completion by the debtor of all payments under the plan, the court grants the debtor a discharge of all debts provided for by the plan.

\(^{20}\) The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title (11 U.S.C. § 101(30) (2005).
Unlike the US debt adjustment, Thai repayment plan provisions allow an individual, partnership, and company debtor to file a payout plan for consideration at the creditors’ meeting and the court. The definition is largely the same – that is a debtor who would like to repay his or her debt in part or by other means can file a repayment plan. The repayment schedule is unrestricted to not more than five years as in the US. The future earnings of the debtor can be included as a source of payment. Also, upon completion of the plan, the debtor gets discharged from outstanding liabilities.

**B. Commencement of a Case and Eligibility**

Chapter 13 can start by a voluntary petition of the debtor. The creditor may not force the debtor to be in a chapter 13 case (11 U.S.C. §§ 301, 303(a) (2005)). Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than 360,475 USD and noncontingent, liquidated, secured debts of less than 1,081,400 USD may be a debtor under chapter 13 (11 U.S.C. § 109(e) (2005)).

Under the Thai Bankruptcy Act, an individual debtor does not have an opportunity to choose between liquidation and submission of the payout plan at the start of the case as do U.S. debtors. The system instead consists mainly of the liquidation procedure and business reorganization procedure. The business reorganization part, equivalent to chapter 11 of the US Bankruptcy Code, is exclusively available to a debtor who is a limited company or a public limited company. An individual debtor or partnership cannot resort to the business reorganization process for their financial restructuring. As a result, an individual debtor is only eligible for the liquidation process. As previously mentioned, only an involuntary bankruptcy system exists in Thailand. Therefore, the only way that the debtor can become bankrupt is through being sued by a creditor, who files a bankruptcy complaint against the debtor at court. If the evidence shows that the debtor is insolvent, is indebted to the creditor not less than the minimum threshold amount of indebtedness, and such debt is liquidated, the
court will issue an absolute receivership order upon the debtor. A receivership order is not a bankruptcy judgment. The main avenue by which the debtor can avoid a bankruptcy judgment is to successfully file a repayment plan. However, the law does not force the debtor to do so; it is the right of a debtor. Unlike the requirement in section 109(e) of the US Bankruptcy Code, a debtor – including an individual, partnership, or company – has the right to submit a repayment plan because any of them can be sued and liquidated under Thai bankruptcy law. There is no debt cap on the debtor who wishes to propose the payment plan; a debtor can submit the plan regardless of the amount of debt.

C. Property of the Estate

Property of the estate in chapter 13 case include, in addition to the property specified in section 541, (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12, whichever occurs first; and (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12, whichever occurs first (11 U.S.C. § 1306(a) (2005)). Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate (11 U.S.C. § 1306(b) (2005)).

Unlike section 1306 of the US Bankruptcy Code, there is no additional provision concerning the property of the estate for a Thai debtor who submits a repayment plan. Whether the debtor goes through the liquidation process with or without filing a payout plan, the property of estate is governed by section 109 of the Bankruptcy Act. This provision states in general that the distributional assets of the debtor include all properties belonging to the debtor as of the date the court issues a receivership order including all rights over any assets
of third parties and assets that the debtor acquires after the issuance of the receivership order until the debtor gets a discharge.

D. Automatic Stay

Filing a chapter 13 petition “automatic stay” most of the collections action by the creditor according to section 362 of the US Bankruptcy code. In a chapter 13 case, the automatic stay is extended by section 1301 to a co-debtor such as a family member who has guaranteed any of the debtor’s obligations. A creditor may not act, or commence or continue any civil action, to collect all or part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt (11 U.S.C. § 1301(a) (2005)).

The Thai filing of the repayment plan does not constitute an automatic stay as in sections 301 and 362 of the US Bankruptcy Code. Under the Thai bankruptcy procedure, the issuance of the receivership order operates as a stay, applicable to all entities, of the commencement or continuation of judicial proceedings against the debtor, the enforcement, against the debtor or against the property of the estate, of a judgment obtained before the issuance of a receivership order. The filing of a repayment plan which occurs after the issuance of the receivership order does not change the effects of the receivership order. Even though the stay only continues until the court confirms the plan, the Thai repayment plan contains a provision that prohibits creditors from collecting through judicial means so long as the payments in the plan are made. So, the effect of the two systems is basically the same.

E. Trustee’s Role

A chapter 13 case is administered by a trustee who is either a standing trustee, one disinterested person appointed by the United States trustee, or (rarely) the United States trustee (11 U.S.C. § 1302(a) (2005)). The main role of the Chapter 13 trustee is to distribute the debtor’s payment to the creditor in accordance with the plan (11 U.S.C. § 1326(a)(2), (c)
(2005)). The chapter 13 trustee’s duties are very similar to those of the chapter 7 trustee’s including being accountable for all property received, investigating the financial affairs of the debtor, examining proofs of claims and object to the allowance of any claim that is improper, opposing the discharge of the debtor, making a final report and file a final account of the administration of the estate with the court and with the United States trustee. The trustee also will appear and be heard at any hearing that concerns the value of property subject to a lien, confirmation of a plan, or modification of the plan after confirmation (11 U.S.C. §§ 1302(b), 704(a) (2005)). In addition, the trustee shall advise, other than on legal matters, and assist the debtor in performance under the plan and ensure that the debtor commences making timely payment under section 1326 that is the debtor shall commence making payments not later than thirty days after the date of the filing of the plan or the order for relief, whichever is earlier (11 U.S.C. § 1302(b)(4)(5) (2005)).

The Thai bankruptcy trustee works a great deal in administering the payout plan procedure. The trustee receives the plan from the debtor, calls the creditors’ meeting, allows any amendment to the plan, and submits a report to the court. After the plan gets approval from the creditors’ meeting and confirmation from the court, the trustee serves as the disbursing agent for monies paid by the debtor under the plan. The Thai debtor starts paying according to plan only after the plan obtains both approval from the creditors’ meeting and confirmation from the court. The debtor does not have to commence making payments within thirty days after the date of the filing of the plan as required in section 1326(a)(1) of the US Bankruptcy Code. If the debtor cannot comply with the payout plan, the trustee reports to court requesting a termination of the repayment plan and the adjudication of bankruptcy.
F. Outline of the Proceedings

1. US Bankruptcy Law

The debtor shall file a plan (11 U.S.C. § 1321 (2005)). The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within fourteen days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct (Fed. R. Bankr. P. 3015(b)). Not later than thirty days after the date of the filing of the plan, the debtor shall commence making payments as proposed in the plan (11 U.S.C. § 1326(a)(1) (2005)). A payment made shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors to the debtor, after deducting administrative expenses (11 U.S.C. § 1326(a)(2) (2005)). In a chapter 13 case, the United States trustee shall call a meeting of creditors to be held no fewer than twenty one and no more than fifty days after the order for relief (Fed. R. Bankr. P. 2003(a)).

a. Contents of Plan

The plan shall (1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; (2) provide for the full payment of the priority claims under section 507, unless the claimants agree otherwise; and (3) provide the same treatment for each claim within a particular class if the plan classifies claims (11 U.S.C. § 1322(a) (2005)). The plan may modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; provide for the curing or waiving of any default; provide for payments on any
unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claims; provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due (11 U.S.C. § 1322(b)(5) (2005)). The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified failed to meet the requirements of section 1322 (11 U.S.C. § 1323 (2005)). “This enables the debtor to respond to any objections informally before the plan is submitted to the court for confirmation (Blum 2010, 461).”

b. Confirmation of Plan

The court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan. The hearing on confirmation of the plan may be held not earlier than twenty days and not later than forty five days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date (11 U.S.C. § 1324 (2005)).

Requirements for plan confirmation by the court are as follows. First, the plan must comply with chapter 13 and other applicable provisions of the Bankruptcy Code (11 U.S.C. § 1325(a)(1) (2005)). Second, all required fees must be paid before confirmation (11 U.S.C. § 1325(a)(2) (2005)). Third, a debtor must file a petition and a plan in good faith and the plan must not violate any law (11 U.S.C. § 1325(a)(3)(7) (2005)). Fourth, an unsecured creditor must receive payment as much as they would have received if the estate were liquidated under chapter 7 (11 U.S.C. § 1325(a)(4) (2005)). Fifth, regarding a secured claimant, if it does not accept the plan, the debtor must surrender the collateral to the secured creditor or retain the claimant’s lien and pay out the present value of that allowed secured claim to the
secured creditor (11 U.S.C. § 1325(a)(5) (2005)). Sixth, the debtor must have an ability to make all payments under the plan and to comply with the plan (11 U.S.C. § 1325(a)(6) (2005)). Seventh, the debtor must have paid all required domestic support obligation such as alimony and child support (11 U.S.C. § 1325(a)(8) (2005)). Eighth, the debtor must have filed all required tax returns (11 U.S.C. § 1325(a)(9) (2005)).

For secured claims, the debtor may pay the present value of the collateral rather than the full amount of the claim, with the bankruptcy judge ultimately determine the collateral’s value if the parties cannot agree. There are three important caveats to this rule that, as a practical matter, meaning that debtors pay the full value of most secured claims in a chapter 13. First, a debtor must pay the full value of a mortgage against the debtor’s principal residence (11 U.S.C. § 1322(b)(2) (2005)). Second, under the “hanging paragraph” of section 1325 (a), a debtor has to pay in full a creditor who has a purchase money security interest with a debtor in a motor vehicle for personal use of the debtor if the debt was incurred within 910-day preceding the filing of the petition. Third, the same “hanging paragraph” requires payment in full for any secured creditor who has a purchase-money security interest in anything else if the debt was incurred during the one-year period preceding the filing (11 U.S.C. § 1325(a) (2005)).

The court may approve the plan over the objection by the trustee or the unsecured claimant if the plan provides full payment to the unsecured creditors or the plan has already provided to pay all debtor’s projected disposable income to unsecured creditors under the plan over the “applicable commitment period” of three or not less than five years (11 U.S.C. § 1325(b) (2005)). “If confirmation is refused, the debtor has the opportunity to correct objectionable elements in the plan by amendment. If the plan is not satisfactorily amended, a party in interest can apply under section 1307 for dismissal of the case or its conversion to chapter 7” (Blum 2010, 462).
c. Effect of Confirmation

The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan. The confirmation of the plan vests all of the property of the estate in the debtor. This property is free and clear of any claim or interest of any creditor excepted as otherwise provided in the plan or in the order confirming the plan (11 U.S.C. § 1327 (2005)). The debtor has to make a payment to the trustee according to the confirmed plan. Material default by the debtor with respect to a term of a confirmed plan is a cause for the court to convert a case to a case under chapter 7 or dismiss a case (11 U.S.C. § 1307(c)(6) (2005)). “Generally, a court will allow a debtor to attempt to cure a default or modify a plan before dismissing or converting it” (Becket and McNeal 2011, 146).

“If the debtor cannot complete performance under the plan, and cannot modify the plan under section 1329 or obtain a hardship discharge under section 1328(b), the court may dismiss the chapter 13 case or convert the case to chapter 7 (11 U.S.C. § 1307(c) (2005)). Creditors’ claims will be reinstated to their original amounts, less any payments made during the chapter 13 case” (Tabb 2009, 1275).

d. Modification of Plan after Confirmation

At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim to increase or reduce the amount of payments on claims or extend or reduce the time for such payment, and so forth (11 U.S.C. § 1329 (2005)).

e. Revocation of an Order of Confirmation

The court may revoke a confirmation order if such order was procured by fraud. However, such request must be made within 180 days after the date of the entry of an order of confirmation by a party in interest (11 U.S.C. § 1330(a) (2005)). After the order
revocation, the court will dismiss the case unless the debtor proposes and the court confirmed the modified plan (11 U.S.C. § 1330(b) (2005)).

2. Thai Bankruptcy Law

The procedure starts with the debtor filing the repayment plan with the trustee within seven days after submitting the explanation of matters relating to any business and assets as required under section 30 of the Bankruptcy Act. Alternatively, the trustee may set a time period in which the debtor must act (Bankruptcy Act § 45 (2004)). In practice, however, many trustees allow the debtor until the date of creditors’ meeting to submit a repayment plan.

a. Contents of Plan

The repayment plan must contain the contents of the plan, the method of management of business or assets, and details of security, or the guarantor, if any (Bankruptcy Act § 45 (2004)). There is no specific requirement about the length of plan as in subsection 1325(b)(4) of the US Bankruptcy Code. The Thai applicable commitment period can be less than three years or more than five years. The Thai bankruptcy law stipulates broadly that whenever the debtor desires to repay all of his or her liabilities in part, the debtor may file a payout plan.

A debtor may amend the plan during the creditors’ meeting or during the consideration of the court if the trustee or the court considers such amendment to be of benefit to the creditors generally (Bankruptcy Act § 47 (2004)). When creditors pass a special resolution approving the debtor’s plan, the debtor or the trustee is empowered to apply for a court confirmation on the plan (Bankruptcy Act § 49 (2004)).

b. Confirmation of Plan

For the repayment plan to be in effect, the plan must receive both approval from the creditors’ meeting and confirmation from the court. The Thai trustee will call a meeting of creditors to consider whether to approve the plan. For the plan to get approval from the
creditors’ meeting, the plan must acquire a special resolution (Bankruptcy Act § 45 (2004)). “Special resolution” means a resolution by creditors that hold at least three quarters in amount and more than one-half in number of the allowed claims of creditors presented at the creditors’ meeting in person or by proxy, and voting on such resolution (Bankruptcy Act § 6 (2004)).

There is no regulation on how much the debtor has to pay unsecured creditors and secured creditors as appears in subsection 1325(a)(4) and (5) of the US Bankruptcy Code. The plan does not have to show the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim being not less than the amount that would be paid on such claim if the estate of the debtor were liquidated. Also, the plan does not have to guarantee that with respect to each allowed secured claim provided for by the plan, secured creditors will receive the equivalent value of the collateral. All that matters is that the creditors’ meeting approves the plan. If the creditors are not pleased with the proposed repayment percentage, they can reject the plan. In short, the two previous criteria in subsection 1325(a)(4) and (5) of the US Bankruptcy Code are not conditions for a plan’s approval by the creditors’ meeting and plan’s confirmation by the court under Thai bankruptcy law.

The confirmation criteria are not as elaborate as in section 1325 of the US Bankruptcy Code. The Thai court will confirm the repayment plan only when: (1) The plan will first pay all the priority claims; (2) The plan is of benefit to creditors generally. There is no preferential treatment among creditors (Bankruptcy Act § 53 (2004)).

c. Effect of Confirmation

The repayment plan that is approved by the creditors’ meeting and confirmed by the court binds all creditors, whether their claims are provided for by the plan or whether they accepted or rejected (Bankruptcy Act § 56 (2004)). Nevertheless, an approved and confirmed
repayment plan does not release the following persons from liability: a person who is in partnership with the debtor, or who is jointly liable with the debtor (Bankruptcy Act § 59 (2004)).

d. Modification of Plan after Confirmation and Revocation of an Order of Confirmation

Modification of plan after confirmation is not allowed by law. If the debtor defaults with respect to a term of a confirmed plan, a creditor or bankruptcy trustee can file a request to the court. The court may order the debtor or the guarantor of the plan to comply with a confirmed plan (Bankruptcy Act § 57 (2004)). In general, the court will set up a hearing date. The modification of an original plan may be possible if all parties agree.

In case the debtor ultimately fails to repay his or her debts as agreed in the plan, or it appears to the court on evidence that the plan cannot be carried out without injustice, or that there will be unreasonable delay, or that the confirmation order by the court was obtained by the debtor’s fraud, the court is empowered to revoke the confirmation order and adjudge the debtor a bankrupt. The revocation does not affect any act done in accordance with the plan (Bankruptcy Act § 60 (2004)). Creditors’ claims are then reinstated to their original amounts, less any payments made during the repayment plan. The trustee will inform all creditors whose debts arose between the court’s confirmation date and the court’s bankruptcy adjudication date to file proofs of claims within a designated time.

G. Discharge

1. US Bankruptcy Law

After completion by the debtor of all payments under the plan, the court shall grant the debtor a discharge of all debts provided for by the plan with some exceptions such as debt for restitution or a criminal fine; inclusion in a sentence on the debtor’s conviction of a crime or debt for restitution or damages; or awards in a civil action against the debtor as a result of
willful or malicious injury to an individual or the death of an individual (11 U.S.C. § 1328(a) (2005)).

a. Hardship Discharge

The court may grant a discharge to a debtor that has not completed payments under the plan only if (1) the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable; (2) the unsecured creditors have received as much as they would have received if the estate has been liquidated under chapter 7; (3) modification of the plan is not practicable (11 U.S.C. § 1328(b) (2005)). The hardship discharge does release the debtor from all unsecured debts provided for by the plan but with more exceptions than the full compliance discharge according to section 1328(a) (11 U.S.C. § 1328(c) (2005)).

b. Revocation of Discharge

On request of a party in interest before one year after a discharge is granted, the court may revoke such discharge only if (1) such discharge was obtained by the debtor through fraud; and (2) the requesting party did not know of such fraud until after such discharge was granted (11 U.S.C. § 1328(e) (2005)).

2. Thai Bankruptcy Law

A debtor receives a discharge when he or she completes all payments under the confirmed plan. However, the discharge does not release a debtor from any tax debt and debts which arose through dishonesty or fraud on the part of the debtor, or debts for which creditors did not file claims owing to dishonesty or fraud to which the debtor is a party (Bankruptcy Act §§ 56, 77 (2004)). There is no Thai “hardship discharge” as in section 1328(b) of the US Bankruptcy Code. There is also no provision on the revocation of the discharge as in section 1328(e) of the US Bankruptcy Code.
IX. Conclusion

Both similarities and differences exist between the US and Thai consumer bankruptcy laws. Both systems share the same goals of the orderly distribution of the limited assets of the debtor to creditors and provide relief from liabilities for the debtor. The core distinction is the overall function of the system. The US system is debtor-oriented while the Thai is creditor-driven. The reader can perceive this dissimilarity from the criteria in commencing a bankruptcy case. Procedures are only commenced involuntarily in Thailand, while in the US it can be both voluntary and compulsory in initiation, with almost all cases instigated by the debtor. US debtors have to decide at the beginning whether they would like to go through the liquidation or debt adjustment route (a multiple-gateway bankruptcy system). In contrast, the Thai debtors do not have such a liberty; the payout plan option is available after the debtor has already been in the liquidation process (a single-gateway bankruptcy system).

The Thai “property of estate” definition is broader. It includes not only the assets at the time of petition but also any property from that point onward until the end of the bankruptcy case. The US automatic stay starts earlier at the filing time while the Thai provision is initiated after the court issues a receivership order. The classifications and treatments of secured, priority, and unsecured claims are largely the same. The US discharge in liquidation process is much sooner than the Thai discharge – around four months after filing as compared to three years after the adjudication of bankruptcy.

Concerning the repayment plan, the availability of the US chapter 13 is narrower in that only an individual debtor within a certain debt limit can file a debt adjustment plan while the Thai payout plan is open to individual, partnership, or company debtors without the same restriction.21 The trustees in both systems play a major role in supervising the repayment plan especially as a disbursing agent. The confirmation of the plan in Thailand requires

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21 Nevertheless, the US chapter 11 reorganization, which is available to American individuals, has a process which is similar to the Thai payout plan in that it is a procedure for debt readjustment with creditor voting.
an additional step. To have a binding effect, the plan must get both approval from the creditors’ meeting and confirmation from the court while the US system only demands the latter. Debtors in both countries receive the discharge at the same time when they complete the plan.

All these comparable features – specifically the distinctions of the two systems – have to be taken into consideration when the reader, especially American or other nationalities that have similar bankruptcy laws as in the US, would like to make an interpretation, draw inference or even come to a conclusion from the data and analyses of the Thai consumer bankruptcy system as shown in Chapters 2 and 3.
CHAPTER 2: BASIC DEMOGRAPHY AND FINANCIAL PORTRAIT OF INDIVIDUAL DEBTORS IN THE THAI BANKRUPTCY SYSTEM

I. Introduction

This chapter provides information about individuals who have found themselves in bankruptcy proceedings in Thailand. The chapter begins with the number of debtors in each case and the debtor’s rate of attendance at the financial examination with the bankruptcy trustee. Then, the text goes on to detail the causes behind a creditor filing a bankruptcy complaint against the debtor and the demography of the debtor – the debtor’s gender, age, residential province, occupation, marital status, the number of children, and current living situation. In addition, the data indicating the financial situation of the individual before and after the bankruptcy process comprise the debtor’s income, assets, liabilities, as well as the type and amount of each class of debt.

The data indicate that the majority of bankruptcies involved a single debtor. More than half of the debtors did not show up at the examination meeting with the trustee. Default on a loan agreement was the dominant reasons behind a creditor filing a bankruptcy complaint against the debtor. Also, bankruptcy affected both men and women at roughly the same rate, with the problem of bankruptcy affecting Thai people nationwide. On average, the Thai bankrupt is in his or her fifties. “Employee” is the most popular occupation, and most debtors no longer work after bankruptcy. The debtor’s previous monthly salaries before the financial turmoil were much more than the average household income of the general population. After entering the bankruptcy process, almost all debtors no longer are in ownership of a house or an apartment. Furthermore, most debtors carried a heavy debt load into bankruptcy with scant assets, resulting in little or no recovery for creditors.
The chapter concludes with discussions and recommendations on four policies about how to improve the Thai consumer debt system: the lending criteria, the creditors’ practice regarding writing off bad debts, debtor education, and discrimination against the bankrupt.

II. Literature Review

Thai legal textbooks on bankruptcy law largely explain the statutes on bankruptcy and reorganization provisions and summarize important Thai Supreme Court decisions on particular issues that need interpretation. All legal articles in this specialized area were written to solve current doctrinal bankruptcy issues at the time of publication exclusively from the legal normative perspective. Furthermore, the Central Bankruptcy Court (CBC) has collaborated with other government and private agencies on six occasions with the research topics focusing mainly on the effects of the then-new reorganization provisions including the main factors for good reorganization plan, impacts of reorganization procedure for debtors who are registered companies in the Stock Exchange of Thailand, as well as comparisons between court-supervised reorganization procedure and other out-of-court debt restructuring means (Central Bankruptcy Court 2012).

Moreover, the CBC and the Legal Execution Department (LED) use the same indicator to test their efficiency—the percentage of cases they can close each year. Particular attention is paid to cases that are still ongoing for more than two years. Both organizations’ goals are not unreasonable given the tasks assigned to them: their purpose is to manage bankruptcy cases. The CBC has to process the bankruptcy case as fast as they can while the LED has to close the bankruptcy case as early as possible. The sooner these two bodies finish their tasks, the better for the creditors to recover their claims even partially and for the debtor to get discharged. Nonetheless, focusing on the number of closed cases overlooks the details of those who have gone through the process. The CBC and LED may find ways to manage their cases more efficiently, but they may never know how to stop or slow the increasing
number of bankruptcy cases. This research would be the first systematic investigation of the current situation of consumer bankruptcy in Thailand. I hope to clear many, if not all, misperceptions surrounding the insolvency circumstances of Thai individuals by the public.

III. Methodology

The data supporting this research were collected in two stages in the summers of 2011 and 2012. In the first period, I examined 999 bankruptcy files stored at the Ministry of Justice. In Thailand, all of this information is kept in paper records making it necessary to examine the files on site. In the second phase, I interviewed fifty individuals in their capacities as loan officers, attorneys representing creditors, bankruptcy judges, and bankruptcy trustees.

A. First Data Collection

1. Sources of Information

The source of my information comes from the required report from the bankruptcy trustee on the examination date according to section 30 of the Bankruptcy Act. On the examination date, aside from general questions about the debtor’s demography, the trustee asks the debtor sixteen standardized questions about the debtor’s financial well-being. The debtor also has to fill in seven lists and schedules regarding the debtor’s liabilities and assets. The sample of a bankruptcy trustee’s examination report as well as the lists and schedules appear in the Appendix. This dissertation focuses exclusively on individual debtors; debtors who are partnerships or companies are excluded from sampling.

Although the data are self reported, the information is quite solid because of the possible criminal and civil sanctions for the making of any false statements. Any debtor who makes a false statement or omits any material facts concerning his or her assets and business will be subject to fine or imprisonment or both (Bankruptcy Act § 163 (2004)). Moreover, failing to provide accurate data is deemed as an act of noncooperation with the trustee,
resulting in an extension of the discharge period from three years to five years after the court adjudges the debtor a bankrupt (Bankruptcy Act § 81/3 (2004)).

Needless to say, information from this financial examination report could be incomplete or imprecise depending upon the trustee’s attentiveness and assertiveness in getting the data from the debtor. Remember that the trustee is the one who asks the debtor about the debtor’s demography and the sixteen standard questions. The trustee also reviews seven lists and schedules about the debtor’s creditors, liabilities, and assets. The liabilities could be ascertained through the proofs of claims filed by the creditors. However, if the trustee simply writes down what the debtor says for the debtor’s general information and the debtor’s assets, the report may lack any important details especially about the debtor’s property. Nonetheless, there are two mechanisms that help sustain the exactness of this information. First, the creditors have the right to review this report and ask the debtor questions regarding the debtor’s assets. Second, as a government official, a Thai bankruptcy trustee falls under the Civil Servant Act as well as the Civil Servant Code of Conduct. Any breach of these two bodies of law could result in punishment, ranging from a warning to a pay cut to dismissal from government service. Also, if the trustee’s action violates any criminal law, he or she is also subject to imprisonment or fine or both. With the presence of these dual control systems, we could say with a high degree of confidence that the trustee should exercise a reasonable level of care in inquiring about the required data from the debtors. In essence, the trustee’s reports are estimates. “Of course, financial data in a bankruptcy file contain a lot of estimates, but any individual-level financial data will involve estimates” (Lawless and Warren 2010, 200).

There is one significant caveat worth mentioning. Even though the debtor is required by law to attend the financial examination with the trustee, the debtor may or may not show up. Of course, there are consequences for not attending this meeting which will be discussed
later. For methodological purposes it is important to note that if the debtor attends, then information the trustee will receive include the demography of the debtor: gender, age, geography, occupation and salary, marital status and number of children, homeownership, details of properties and securities interest on the properties, intention to submit the repayment plan, a list of secured, unsecured, and tax creditors, and schedules of assets.

If the debtor is absent from the meeting, the financial examination report will not have any information about the debtor’s occupation, income, marital status, community properties, current living situation, life insurance, cause of bankruptcy filing, details of property’s transfer within designated time, details of any pending litigation, the intention to submit a repayment plan as well as the debtor’s assets. The missing information about the debtor’s assets is the most problematic. With no clue about the debtor’s property from the debtor, the investigative task falls heavily on the creditors to find any remaining properties. In practice, the bankruptcy trustee usually takes a more passive role in searching for the debtor’s assets with creditors taking the lead.

In addition, regarding the standard-form questions, question eight asks the debtor about the cause behind the creditor filing a bankruptcy complaint against the debtor, and the debtor has two choices: default on the lending agreement and other reasons. Unfortunately, this question does not get at specific possible underlying causes of insolvency, such as a job loss or medical problems. A better question regarding this issue would ask the causes of insolvencies and the debtor has to select answers such as: decline in income due to loss of job or illness, financial problem that resulted from being self-employed, victim of disaster (e.g. flood, fire, or tsunami), being cheated or tricked (e.g. by creditors, lenders, or sales people), or problems controlling spending or with gambling.
2. The Nature of the Examination Report

The report is not a public document; it is government information as well as personal information under the Government Information Act B.E.2540 (1997 CE). Section 9 of this statute stipulates that any government agency has to provide the public access to government information under specified conditions. Regarding personal information, under section 23, the responsible government agency must provide only that information deemed necessary for the public interest according to the agency’s purposes. However, under section 24, the government agency must not disclose any personal information to other government units or persons without the written consent from the owner of such information. One of the exceptions of this rule according to section 24(4) is disclosure for research purposes. However, the researcher must not identify the name of the subject or any part of such information that may allow anyone to trace the owner.

In this research, I hand-coded the information in these reports into forms I had developed for this purpose and then coded the forms into a Microsoft Excel database. No identifying information was collected from the bankruptcy trustee’s financial examination report.

To ensure the accuracy of the data, I double-coded 2 percent of the database (20 cases). I also reviewed all files twice with regard to questions concerning the causes behind a creditor filing a bankruptcy complaint against the debtor, current living situation, marital status, and the debtor’s occupation before and after the initiation of the bankruptcy case.
3. Sampling

I randomly sampled reports of 999 debtors between the years 2007 and 2010: 199 cases from 2007, 200 cases from 2008 and 300 files each from 2009 and 2010. The files of all individuals who entered bankruptcy during the studied time period had an equal chance of being selected for the study.

In any file that had more than one debtor, only one of the debtors’ financial examination reports was randomly selected. It turned out that 34.4 percent of 999 cases had more than one debtor. Within these files, almost 55 percent of the debtors who were randomly chosen were the primary debtors.

4. Hypotheses

I expect to find that the main reason for filing bankruptcy cases in Thailand is the default on the lending, mortgage, or sales contract. These contracts must have a principal amount in the vicinity of 450,000 – 600,000 THB. So after the debtor defaults, the principal plus accrued interest may potentially pass a 1,000,000 THB minimum threshold amount of indebtedness. This minimum indebtedness is a requirement for any creditor who wishes to file a bankruptcy complaint against the debtor under Thai bankruptcy law.

As a consequence, those with a credit line in the range of 450,000 – 600,000 THB require a monthly salary of around 30,000 – 60,000 THB. To be entitled to such a monthly payment, a person must have been working for quite some time. Thus, the age of the bankrupt should be between thirty-five to fifty years old.

The marital status and the number of children may have an indirect effect on bankruptcy in a way that the debtor may need to buy a house instead of an apartment, or a bigger house, or a bigger car for an expanded family.

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22 Originally, I had intended to code 200 cases from 2007. One of the cases randomly pulled for the sample turned out to be a duplicate, which was not discovered until I had left Thailand. At this point, I could no longer access the files and it was impossible to correct the error.
I predict that the majority of debt to be secured. It is likely that it is guaranteed by the debtor’s assets such as their home or car. The role of unsecured debt in bankruptcy is minimal. Unsecured debts such as the monthly expenses of the family, the credit card, alimony and child support awarded in the Thai justice system and medical expenses are unlikely to accumulate over 1,000,000 THB.

**B. Second Data Collection**

Preliminary examination of the data from the official government bankruptcy files suggested that creditors may be playing a key role in sorting which debtors end up in the Thai bankruptcy system and how debtors experience the system. Exactly how creditors may be playing this role was not something that appeared in the paper records already accessed or anywhere else in the written records of bankruptcy proceedings.

I interviewed a total of fifty individuals connected with the Thai bankruptcy system:

**TABLE 2. Classification and number of respondents**

<table>
<thead>
<tr>
<th>Groups of Interviewees</th>
<th>Number of Interviewees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan officers, debtor-restructuring officers, and attorney representing creditors in 15 financial institutions:</td>
<td>27</td>
</tr>
<tr>
<td>• 6 commercial banks</td>
<td></td>
</tr>
<tr>
<td>• 2 government banks</td>
<td></td>
</tr>
<tr>
<td>• 4 asset management companies</td>
<td></td>
</tr>
<tr>
<td>• 2 credit card companies</td>
<td></td>
</tr>
<tr>
<td>• 1 government agency</td>
<td></td>
</tr>
<tr>
<td>Bankruptcy judges</td>
<td>10</td>
</tr>
<tr>
<td>Bankruptcy trustees</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
</tr>
</tbody>
</table>

These respondents were selected through a snowball sample, initially through the personal contact of the researcher and then through suggestion made during the interviews.

The interviews were in-person and took place in Thai. Participants were provided with an information sheet (translated into Thai) outlining the research and their rights, as is
typical for human-subjects research. In addition, the participants were asked to give verbal consent to the interviews. The interviews lasted from thirty minutes to one hour.

IV. Analysis of Thai Consumer Bankruptcy System

A. General Information about Thai Consumer Bankruptcy System

1. The Number of Debtor in Each Case: a Single Debtor Dominates

The number of debtors in each case ranges from one to five debtors. Most cases (65.6 percent of 999 cases) involve one debtor while 30.7 percent concern two debtors. The remaining 4 percent largely concern three debtors. Generally speaking, we can say that the majority of bankruptcy cases originate from one individual’s decision about his or her finances.

It cannot be assumed that cases with two debtors are both husband and wife; they could be a married couple, relatives, or simply friends. Cases which involve more than one debtor can arise from the fact that the debtor and at least one other person jointly requested the loan from the bank or financial institution; that is, they are co-debtors. Alternatively, it could be that other person acted as a guarantor for the performance of the lending or mortgage or leasing agreement in which the debtor acts as a primary debtor.
2. The Debtor’s Rate of Attendance at the Financial Examination Meeting with the Bankruptcy Trustee: Required by Law with Harsh Consequences for Absence yet More Than Half Did Not Show Up

Under section 30 of the Thai Bankruptcy Act, the debtor has a duty to report the bankruptcy trustee. The trustee then examines the monetary conditions of the debtors. Surprisingly, only 46.3 percent (462 debtors) of 999 debtors showed up for this important meeting. Absence from this meeting has negative effects on the debtor: the extension of discharge time, the issuance of arrest warrant upon the debtor, and possible fine and imprisonment. The severest civil consequence is the extension of discharge period. The act of not showing up is deemed an act of noncooperation by the debtor in assisting the trustee in collecting the debtor’s asset. As a result, under sections 30, 81/2, and 81/3 of the Bankruptcy Act, the discharge period will be extended from three years to five years as of the time the court adjudges the debtor a bankrupt. The reasons behind this large volume of absences are intriguing. If the debtor knew about this unfavorable ramification, the debtor would come and meet with the trustee. Indeed, any bankrupt would want to get out of insolvency as soon as possible.

It is possible that the debtor may not know they are being sued in a bankruptcy case. One argument is that the debtor does not live at the same place as their house registration.23 They may register in one province, but because of their work or their marriage, they work or move to another province without changing their house registration. Therefore, since in general all court and government documents are sent to the parties in interest’s registered address, the debtor is not aware that their creditors have filed a bankruptcy case against them or even that the court issued a receivership order or the bankruptcy judgment upon the debtor.

Another explanation worth mentioning is that 1.1 percent (11 debtors) of 996 debtors are considered to be living in the “central house registration.” Under sections 4 and 33 of the

23 All Thais are required to register their places of residence with the government (Housing Registration Act §§ 12, 14, 30 (1991)).
Thai Housing Registration Act B.E. 2534 (1991 CE), a person’s name is put in the “central house registration” if that person moves out of the current residence without informing the “head of the household” of the new address. In case a debtor is treated as living in a “central house registration,” any court or government documents related to that debtor are not sent to the “central housing” address, but the debtor is notified through public announcement, i.e. posting the relevant documents in front of the court or the government agency or publication in a newspaper. Public announcements are rarely seen by the debtor. The debtor may never come to the court or that particular government agency. Regarding notification through newspaper, most laws do not stipulate that the publication must be a widely distributed newspaper; in practice, the notifications are printed in relatively unknown newspapers due to cost considerations. The outcome is that the debtor is deemed legally informed, but he or she almost always has no knowledge of the pending legal procedures against him or her.

Another possible explanation is that the debtor simply ignores any letters sent from the Central Bankruptcy Court (CBC) and the Legal Execution Department (LED). This comes from that fact that at least 36.7 percent (158 debtors) out of 430 debtors were sued in civil litigations prior to the bankruptcy case. The debtor may have thought that since in the civil case the creditor has already foreclosed on the debtor’s houses and other properties, the debtor no longer has any liabilities left. Nonetheless, this description is counterintuitive in a way as the question remains as to why the debtor does not do anything when they receive notices from the CBC or the LED. Under Thai bankruptcy procedures, after the creditor files a bankruptcy complaint, the court will send a copy of the complaint and inform the debtor about the trial date. The debtor must receive or be deemed to have received this document before procedures can continue. In case the court issues a receivership order against the debtor, one copy of such order is also sent to the debtor, informing the
debtor about the order and requesting the debtor to schedule a meeting with the trustee. Many people ask the identified senders about the details of such documents or lawyers about the court documents sent to their homes. It is unlikely that they simply put them in a trash bin. However, other commentators argue that for someone who is overwhelmed by debt and lawsuits, the “rational” decision may be to ignore the notice. With this in mind, the first two arguments may be stronger than the last. Nevertheless, if the last explanation is ever ascertained, this would lead to another problem regarding debtor education. Who should be responsible for informing the debtors of legal rights and duties? The debtors themselves, the debtors’ attorneys, the judges in the civil case, or the relevant government personnel?

Cross-sectional analyses reveal that both the median and mean of those debtors who attended were higher than those of who did not. The mean (median) debt of those that did attend is 16,400,000 (3,771,524) THB as compared to 8,736,770 (2,930,286) THB of those who did not show up. The difference in the total amount of debt that both groups of the debtors had is statistically significant.\(^\text{24}\) This interpretation demonstrates that perhaps the total amount of debts has nothing to do with whether the debtor would appear before the trustee or not. Since there is no information on the incomes and assets of the absent debtors, cross-section analyses on these variables as well as debt to income ratio are not possible.

Female debtors were relatively more likely (47.2 percent) than male debtors (45.5 percent) to attend a financial examination. But, the relationship between gender and rate of attendance is not statistically significant.\(^\text{25}\) So, this figure cannot be used to support the general idea that women are generally more responsible than men.

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\(^{24}\) \(t = -2.165, p = 0.031\); Wilcoxon \(Z = -4.230, p < 0.001\).

\(^{25}\) \(X^2(1, N = 996) = 0.312; p < 0.577\).
Examining the relationship between the attendance rate and the debtors’ occupations before entering bankruptcy procedures reveals that debtors who are government officials, state enterprise employees, farmer or fisherman, housewives, do not have any occupation, or have other category of jobs showed up one hundred percent of the time. Just one debtor in each category of debtors who are business owners and own-account worker without employees did not appear in front of the trustee. Thus, almost all debtors who did not come to the financial examination were those whose occupations were employees and merchants. The relationship between the rate of attendance and the debtor’s occupation prior to bankruptcy is statistically significant. We therefore reject the null hypothesis that debtors with different occupations do not affect the probability of showing up for the financial examination meeting with the trustees.

The current trustees suggested that even among those 46.3 percent appearing before the meeting of trustee, some did not show up right after they received the notice from the trustee. Many of them learned about their receivership orders or bankruptcy judgment at the immigration counter before they were about to leave the country. Under section 67(3) of the Thai Bankruptcy Act, any person under receivership order or bankruptcy judgment may not leave the country without the permission letter from the court or the trustee. As a result, these debtors came to see the trustee.

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26 There are ten categories of occupations that the debtors identified: government official, state enterprise employee, employee, merchant or seller, business owner, own-account worker without employee, farmer or fisherman, housewife, no occupation, and other occupations.

27 \(X^2(9, N = 529) = 32.592; p < 0.001\).
3. Causes behind a Creditor Filing a Bankruptcy Complaint against the Debtor: a Single Default on a Lending Agreement Can Land You in Bankruptcy Court

![Figure 2: Causes behind creditor's bankruptcy filing]

The typical scenario before the creditor commences the bankruptcy case is as follows. The debtor loans money from a bank and defaults on a loan. The bank then forecloses on the debtor’s properties and puts them up for auction. In case there is a deficiency, the debtor may or may not realize that this deficiency is an outstanding debt that the debtor still has to pay. Over time, this remaining amount by itself or the amount plus interest accumulates and surpasses the minimum threshold amount of indebtedness of 1,000,000 THB as stipulated in section 9 of the Thai Bankruptcy Act. As a consequence, the debtor gets sued in a bankruptcy case.

By far the greatest reason behind a creditor filing a bankruptcy complaint against a debtor in Thailand is the debtor’s default on the lending agreement\(^{28}\) as hypothesized above. 82.7 percent (377 cases) out of 456 cases were originated from this cause. The default on the guaranty agreement comes second at 12.9 percent (59 cases). The remaining causes include

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\(^{28}\) Concerning the debtors who said that a default on lending agreement is the cause behind them being sued in bankruptcy cases, some of them indicated that they also defaulted on the mortgage agreement. Nonetheless, from the responses of the debtors, it is not clear cut to differentiate between default on general lending agreement and default on lending agreement plus a related mortgage agreement. Therefore, those who indicated both defaults on lending agreement and mortgage agreement are treated as just a default on a lending agreement for the cause behind being sued in bankruptcy cases.
the debtor being cheated or tricked at 1.8 percent (8 cases) and other reasons at 2.6 percent (12 cases).

For those who indicated that the cause of their bankruptcy case was the default on lending agreement, from 235 available files, the mean original loan amount was 2,308,027 THB with the median at 1,200,000 THB. For those who specified defaults on three types of guaranty agreement (on house, on car, and general contract), out of 10 observations, the mean of the original guaranty amount was 1,360,000 THB with the median at 1,300,000 THB. From these means and medians of the original loans either in the lending agreement or guaranty agreement, they were far above the amount I first hypothesized. It is obvious that by the time these agreements are approved, the debtor is at risk of bankruptcy. The starting liability amount has already exceeded the minimum amount of indebtedness for the creditor to be able to sue the debtor in a bankruptcy case.

As an attempt to classify in detail the cause of the default of a guaranty agreement, I distinguish the defaults on the guaranty agreement as follows: house, car, or general agreement. From 456 available files, 11.6 percent (53 cases) were defaults on general guaranty agreement, 1.1 percent (5 cases) were defaults on a guaranty agreement on house, and 0.2 percent (1 case) were defaults on a guaranty agreement on car. Nevertheless, the tally for defaults on general guaranty agreement can be a guaranty on a house, a car, or simply a general loan. The debtor may not give all the details of the guaranty agreement and the trustee may not push for them. Or the debtor may give such information but the trustee may not record it completely. All in all, we can say that the debtor was sued in bankruptcy cases due to defaults on guaranty agreement for 12.9 percent of the total cases.

The scenario whereby the debtor was tricked or cheated, leading to the debtor’s insolvency include someone using the debtors’ name to buy a house or asking the bank for a loan, someone forging the signature of the debtor and using it in the transaction, or someone
persuading the debtor to enter into a contract in which the debtor does not know the exact
details. Other reasons of being sued given by the debtor were: (1) nonpayment of the Specific
Business tax\textsuperscript{29} to the Revenue Department, (2) default on auto-leasing agreement, and
(3) failure to pay according to a sales agreement.

\textbf{a. The Debtor’s General Characteristics and Behavior: Bankruptcy and
Irresponsibility as well as Moral Issues}

Some people have accused those who are bankrupt of being not able to control their
spending by indulging themselves in unnecessary accessories and living beyond their means.
Others wonder about the involvement of gambling in these debtors’ lives. It is one of the
moral disputes in the bankruptcy law system as to whether the law should provide a fresh
start to an irresponsible debtor. The distinction between an honest debtor and a dishonest
debtor is very difficult, if not impossible, to accomplish.

To pinpoint the root cause of the debtor’s insolvency and identify any irresponsible
debtors, the Thai trustee is required to ask whether or not the debtor spends his or her money
recklessly or goes gambling. 99.26 percent (405 debtors) out of 408 debtors said they did not
spend their income carelessly or gamble. Two of them explicitly admitted that they gambled
but did not spend the money without thinking. One of the debtors explained that he gambled
because he had a lot of money to spend and that the economy was good at that time.

The answers that the debtors gave on these questions may or may not be truthful,
but at least we know that almost all of debtors perceive no problems of frivolous spending or
gambling. Alternatively these problems, if any, have no relevance to them being in the
bankruptcy process.

\textsuperscript{29} Any seller must pay this tax as a result of selling a real estate property (Thai Tax Code § 91/2 (1938)).
B. The Demography of the Debtor

TABLE 3. Summary Demographic Statistics

Table 3 presents summary statistics for the basic demographic characteristics of individual debtor in Thai bankruptcy system from 2007 to 2010.

<table>
<thead>
<tr>
<th>Gender</th>
<th>53% Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Mean = 50.8 years</td>
</tr>
<tr>
<td></td>
<td>Median = 50 years</td>
</tr>
<tr>
<td>Marital Status</td>
<td>32% Divorced</td>
</tr>
<tr>
<td></td>
<td>31.6% Married</td>
</tr>
<tr>
<td></td>
<td>15.4% Single</td>
</tr>
<tr>
<td></td>
<td>12.4% Live with a permanent partner</td>
</tr>
<tr>
<td></td>
<td>8.6% Widowed</td>
</tr>
<tr>
<td>Current Living Situation</td>
<td>83.2% Live with someone without paying rent</td>
</tr>
<tr>
<td></td>
<td>13.3% Rent a house or an apartment</td>
</tr>
<tr>
<td></td>
<td>3.1% Own a house or an apartment</td>
</tr>
</tbody>
</table>

1. Gender: No Sex Disparity

For decades advocates of Thai women’s rights have campaigned for equal rights under law. They claim that there are big differences between men and women holding political positions such as cabinet members as well as Members of Parliament. They also argue about the income disparity between men and women. Women’s rights groups legally achieved some of their goals in 1997 when the so-called “1997 People Constitution” stipulated explicitly for the first time that discrimination based on gender is not allowed. With full participation in a market economy comes the risk that the market economy creates.
From the bankruptcy law perspective, there seems to be no gender disparity for those who found themselves in bankruptcy: roughly 53 percent are male and 47 percent are female.

As of December 31, 2010, there were 65.4 million people in Thailand: 33.3 million were female and 32.1 million male. From this figure, we should expect to find more women than men in bankruptcy cases. One explanation could be that the man is regarded as the “head of the household.” Usually the man is the one who asks for a loan for the family either for buying a new home or car or fixing their assets or for general assumption. In some cases, the financial institutions may ask the wife to act as a co-debtor or a guarantor.

Looking at cross-sectional differences across gender, men have a mean (median) monthly income of 37,988 (18,000) THB compared to 29,390 (11,300) THB for women. The means are not significant because of significant skewness and variance in the data. After log-transforming, the means approach statistical significance. Most importantly, a Wilcoxon rank-sum test shows a statistically significant difference. Thus, there is little doubt that male debtors enter bankruptcy earning more than female debtors. Perhaps that is not a particularly surprising finding, but when looking at the debt owed by men versus women, it was basically the same. With the same debt but lower income, women thus enter bankruptcy in worse financial shape with a mean (median) debt-income ratio of 79.3 (25.4) as compared to men who have a mean (median) debt-income ratio of 71.2 (17.8). It is more difficult for women than men to repay their debts. Also, with a higher debt-income ratio, the effects of debt may linger with women longer after a bankruptcy proceeding.

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30 $t = -0.887, p = 0.376$.
31 $t = -1.74, p = 0.077$.
32 Wilcoxon $Z = -3.312, p < 0.001$.
33 $t = 0.341, p = 0.733$; Wilcoxon $Z = 1.937, p = 0.053$. 
2. Age: Hope Floats—Not Everyone Has Enjoyable Retirement Years

Most adults are expected to work after receiving a bachelor degree. The starting salary for the majority of occupations is not high; however, the wages usually increase as the experience of the worker grows. Without any inheritance or any financial assistance from his or her parents, any person either living alone or thinking about starting their own family tries to acquire the basic necessities for life, e.g. a vehicle, a house, or an apartment, and other basic amenities and accessories. People work hard at a younger age through middle age with the expectation that they will have a good quality of life when they retire.

The credit-based economy allows the possession of these necessities much sooner than if these individuals have to save until reaching the required amount. The debtor then repays on a monthly basis according to terms in each contract ranging from one year to thirty years. Before any financial institution grants any loan, they usually check the credit history of the debtor and determine the total amount that they will allow and the monthly repayment rate that is sufficient to cover their cost plus interest. At least two assumptions must be made here for the debtor not to default on this agreement. First, the creditor makes a correct credit evaluation and second, nothing has been changed that may affect the stream of income of the debtor. In reality, some circumstances alter both the above conditions, especially the second, to the point that they may no longer be sustainable. As a result, some debtors have to spend their near-retirement years solving the issue of their debts and many of them go bankrupt.

The ages of debtors in Thailand range from twenty seven to eighty-eight years old. The average age is almost fifty-one years old. 90 percent are above forty years old and 75 percent above forty-four years old. This result comes out as anticipated, that is that the ages of the debtor should be between thirty-five and fifty years old. In Thailand, to commence a bankruptcy case, there is a minimum threshold amount of debt, which is currently set at
1,000,000 THB for an individual debtor. The major cause behind the filing of a bankruptcy case as shown earlier is a default on the lending agreement.

A debtor who receives a bachelor’s degree might typically start working at the age of twenty-three years old. To be eligible to borrow off 1,000,000 THB or more, any individual must have been working for a long while—in most cases in the vicinity of ten to fifteen years. Then, it may take a few years before the debtor defaults on this agreement. In a number of cases, as soon as the debtor defaults three times consecutively, the creditor pursues civil-case litigation first. The normal length of civil procedure for this type of case is about one to two years. If the creditor wins the case, it forecloses the debtor’s property and puts the property up for public auction. This execution of judgment process is usually finalized within two to three years. Generally speaking, in case there is a deficiency from the public auction, the debtor is liable to pay the remaining amount. In a large number of cases, the debtor does not repay their remaining obligation for various reasons. The creditor usually waits to see whether the executing officer can gather any additional assets from the debtor. The creditor often waits for almost ten years, just before the statute of limitation for enforcing the civil case judgment expires. In case the deficiency by itself or the deficiency plus interest exceeds the minimum threshold amount of indebtedness, the creditor initiates a bankruptcy case. By the time all these routine scenarios play out, the debtors are much older since the time they started asking for a loan. Therefore, the average age of 50.8 years old is not surprising.

3. The Debtor’s Whereabouts: All over the Country

The bankruptcy problem did affect Thai people nationwide. The debtors have registered residences in almost all seventy-six provinces,34 albeit at a varying frequency.

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34 As of March 23, 2011, Thailand has seventy-seven provinces. The 77th and newest province is Bueng Kan. However, since this database was collected from files from 2007 to 2010, Bueng Kan is not listed as one of the provinces of Thailand.
Seventy-two provinces were represented in the database. Regionally speaking, Bangkok residents accounted for 33.2 percent of those in bankruptcy; this percentage ties in with the number of bankrupts in the central region. The northern region comes third at 13.9 percent followed by the northeastern at 11.4 percent. The southern part of Thailand has the least bankrupt at 8.3 percent. Three out of the top-five provinces which have their residents in the bankruptcy procedure were from the central region of Thailand, namely, Nonthaburi, SamutPrakan, and PathumThani. The top-five provinces debtors registered as residential provinces were Bangkok at 33.2 percent, Nonthaburi at 5.2 percent, Chiang Mai (in northern region) at 4.8 percent, SamutPrakan at 4.1 percent, and PathumThani at 3.8 percent.

Comparing Bangkok debtors with debtors who reside in the rest of the country, Bangkok residents have greater income and more debt. The median income for Bangkok debtors is 15,500 THB while that of the rest of the country is 14,000 THB. The median total amount of debt for Bangkokians is around 4,039,000 THB while that of the rest is about 2,913,000 THB. The income difference is not statistically significant while the debt variation is. Bangkok debtors also have higher median debt to income ratio than the remaining debtors (22.4 as compared to 19.6). However, the inequality is not significant.

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35 I followed the National Statistical Office (NSO) method of dividing Thailand into regions. NSO separates Thailand into five areas: Bangkok, Central, North, Northeast, and South.
36 t = -1.073, p = 0.284; Wilcoxon Z = -1.757, p = 0.079.
37 t = -1.232, p = 0.218; Wilcoxon Z = -4.006, p < 0.001.
38 t = -1.202, p = 0.230; Wilcoxon Z = -0.678, p = 0.498.
4. The Debtor’s Occupation\(^{39}\) Prior to Being Sued in a Bankruptcy Case: Almost All Careers Are Represented

People from almost all walks of life find themselves in bankruptcy; there are ten categories of occupations identified among the debtors: government official, state enterprise employee, employee, merchant or seller, business owner, own-account worker without employees, farmer or fisherman, housewife, no occupation, and other occupations.

Out of 529 debtors, the debtors worked as employees the most at 41.0 percent (217 debtors). This is followed respectively by merchant at 29.5 percent (156 debtors), business owner at 8.9 percent (47 debtors), government official\(^{40}\) at 5.9 percent (31 debtors), and farmer or fisherman at 4.4 percent (23 debtors). From the available information for those debtors who were government officials, it was found that many of them were nurses, teachers, police, and a soldier.


\(^{40}\) From a national survey conducted by NSO in 2010, 84.1 percent of government officials’ households have debt. The average debt per household is at 872,388 THB. Regarding the type of debt that the government officials have, 56.4 percent is debt from acquiring a residence, 15.2 percent from buying or repairing a vehicle, 13.3 percent for general consumption, 5.8 percent for investment in family business, and 3.9 percent for education purposes (National Statistical Office 2012).
The Thai National Statistical Office (NSO), Ministry of Information and Communication Technology defines “employee” as a person employed for wages or salaries based on continuous work without any decision-making authority. Wages or salaries may be paid on a monthly, daily, or hourly basis. This definition is certainly very broad. It encompasses those who work in the bank, any private company, or public limited company, as well as those who work as general workers. “Own-account worker without employee” is defined by NSO as a person who operates an enterprise on his or her own account (or jointly with others in the form of a partnership), with the authority to make decisions on operating the enterprise and full responsibility for all risks, either for profits or dividends without engaging any employees but they may have family members or apprentices who work without pay. I use the term “Farmer or Fisherman” to include farm operators on crop production, livestock, fresh water or marine animals who mainly owned the land.

It is important to note that category 11 “no occupation” does not have the exact meaning as category 12 “unemployed.” According to the standard question asked by the bankruptcy trustee on this issue, the debtor has two choices between naming his or her career or saying that he or she does not work at that moment. Some of the debtors, who are of retirement age, i.e. above sixty years old, accounting for 14.1 percent of the database or those who get their financial support from their grown-working children or other resources, would say they do not work. Therefore, for this group of debtors, it does not mean that they are seeking jobs and could not find one.

5. The Debtor’s Previous Monthly Salary Prior to Being Sued in a Bankruptcy Case: They Are Not Lower Income People.

Out of 430 debtors, the mean of the debtors’ previous monthly salary prior to being sued in a bankruptcy was 30,821.3 THB. 50 percent of the debtors earned at least 10,550 THB and 25 percent receive at least 26,450 THB. The means of the debtor’s previous

41 Unemployment as of the end of August 2011 was at 0.7 percent.
monthly salary was higher than the average income per household but still lower than the average income of a government official household.42

Note that fifty-three debtors indicated that they were uncertain about their total monthly income. This number accounted for 12.3 percent of 430 debtors. If they were able to estimate their monthly revenue, this may have increased the mean of this variable. The debtors’ inability to estimate their incomes may come from the fact that they did not have a job that pays on a regular monthly basis.

6. The Debtor’s Current Occupation: Stop Working Is a Trend While Government Officials Struggle to Keep Their Jobs

There is a change of pattern in terms of the debtor’s occupations after the debtor was sued in a bankruptcy case. After the creditor initiated a bankruptcy case, 55.3 percent (252 debtors) out of 456 debtors did not work anymore. Employee is the second most popular option at 29.4 percent (134 debtors).

There is only one debtor who continues to be a business owner; none of the debtors is an own-account worker without employees. This particular outcome may have occurred because the debtors’ enterprises are the cause of their insolvency, and they had to shut down their operation. Moreover, after the debtor is placed under receivership, the debtor does not have any right to manage his or her assets or enterprise without the permission of the bankruptcy trustee, court, or the creditors’ meeting under section 24 of the Thai Bankruptcy Act. Another explanation could be that the debtors are in their fifties and no longer want to venture into any kind of investment which may incur a long term debt obligation. Alternatively, they may simply find it difficult to find a credit line one more time once they have undergone the bankruptcy process.

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42 From January to June 2011, an average income per household is 23,544 THB. In 2010, an average income per household of government official stands at 43,650 THB. In 2007 and 2009, an average income per household is 18,660 THB and 20,903 THB respectively (National Statistical Office 2012).
Thirty-one debtors indicated that they were government officials before being sued in a bankruptcy case; after the bankruptcy case took place, around 25 percent (8 debtors) remained government officials, almost 40 percent (12 cases) retired, and another 25 percent (8 debtors) no longer worked. The majority of 173 employees did not change their jobs after entering bankruptcy. 49.71 percent (86 debtors) were still employees, however 46.24 percent (80 debtors) no longer worked. For the 123 debtors who made a living as a merchant, after the commencement of the bankruptcy procedure, 63.4 percent (78 debtors) did not work, 17.1 percent (21 debtors) remained merchants, and another 17.1 percent (21 debtors) became employees. For the twenty-two debtors who were farmers or fishermen, only 13.6 percent (3 debtors) of them kept their job, 36.4 percent (8 debtors) became employees, and half of them (11 debtors) no longer worked.

One consequence of a Thai bankruptcy judgment that may strike many US bankruptcy lawyers as odd and outdated concerns the job security of the debtors who are put under bankruptcy judgment. Thai bankruptcy law still has many aspects of punishing the debtor in bankruptcy including this particular aspect. Specifically speaking, any government official or teacher who is bankrupt will be disqualified from their respective services. 43 The justification for this forced removal is the assertion that a government official or teacher who cannot take care of their finances no longer has any credibility in holding such position. From an economic perspective, however, making those in these professions lose their jobs greatly affects the rate of recovery by the creditors. It is also disastrous to the debtor’s families in terms of losing one unit of income.

7. The Debtor’s Marital Status\textsuperscript{44}: Family Institution and Bankruptcy

32.0 percent (145 debtors) of the 453 debtors were divorced, 31.6 percent (143 debtors) were married debtors, 15.5 percent (70 debtors) of the debtors were single, 8.6 percent (39 debtors) were widowed, and 12.4 percent (56 debtors) lived with a permanent partner.

From the dataset, we can say that almost 85 percent of the debtors lived or used to live with another partner. The stories of majority individual debtors work both ways with regard to relationship between marital status and bankruptcy. The percentages of divorced and widowed debtors are around 40 percent. This number might suggest that the breakdown of a stable relationship or housing unit leads to an insolvency problem. Because of the divorce or death, each divorcee or widow or widower has to manage their monthly expenditures by themselves; there is no more second income generator. On the contrary, the percentages of married debtors and debtors who live with a permanent partner are about 44 percent. This number may indicate that due to marriage or permanently living with another person, additional consumptions are inevitable. This may include buying a new or bigger house or apartment or a new or bigger vehicle. The total expense of two persons usually exceeds that of one person. The financial situation of any individual is worsened especially if his or her spouse does not work. This description may or may not be part of the reason why the debtor went bankrupt in any particular case.

\textsuperscript{44} One caveat regarding the marital status for this research is that I treat marital status as of the financial examination date, and not any date earlier than that. In a small number of files, these records may not be consistent. For example, a debtor used to live with a permanent partner for some time but on the examination date, the debtor no longer lives with such partner. In this case, the debtor is treated as being single. This treatment certainly complicates the information especially if the debtor and the debtor’s partner have children. Another instance is where the debtor is married but on the examination date, the debtor is separated but not legally divorced. In this case, the debtor is deemed married.
a. The Number of Children That the Debtor Has and to Whom the Debtor Has to Give Financial Support

Another aspect of the family institution that creates both short-term and long-term debts for the family is the number of children that one family has. From 386 available observations, on average, the debtor in a bankruptcy case has two children and 90 percent of them have at least one child. The majority of bankrupts have approximately the same household size as those who are non-bankrupts.45

If one concludes in haste from this number that having a child leads to bankruptcy, one may need to look at another relevant fact, namely the number of children to whom the debtor has to provide financial support before making the final analysis. Out of 328 debtors who indicated that they had children, more than half of them (56.1 percent or 184 debtors) did not have to provide their children with any kind of financial support at the time of the examination report, 22.0 percent (72 debtors) had to give monetary help to one child, and another 15.9 percent (52 debtors) had to bear the burden of financing two kids.

As is indicated from the figures given above, the majority of the debtors have no children-related expenditures. Therefore, the number of children that the debtor has as well as the number of the children that the debtor has to give a financial support may or may not correlate with the debtors’ insolvency. This tentative conclusion is substantiated by the fact that debtors who have a child have less debt than those who do not. Debtors with children have a median debt of 3,267,978 THB while child-less debtors have median debts of 3,481,558 THB. The difference is not significant.46

Remember that the information that I received was given on the examination date. It could be that in the past any financial decisions by the debtor are taken into consideration regarding the comfort and future of the children, e.g. buying a larger house or bigger car or

45 The average household size in 2010 is 3.2 (National Statistical Office 2012).
46 Wilcoxon Z = 0.477, p = 0.634.
investment in a business that brings substantial returns for their children’s education. This
could mean the debtor faces an insolvency situation later on in his or her life.

8. The Debtor’s Current Living Situation: Ownership of a Residence Does Not Virtually Exist

Almost all debtors in the Thai bankruptcy system did not have any ownership of
a house or an apartment. On the financial examination date, 83.2 percent (382 debtors) of the
459 debtors lived with someone without having to pay any rent, 13.3 percent (61 debtors)
rented a house or an apartment, and only 3.1 percent (14 debtors) owned their houses or
apartments. There are two debtors (0.4 percent), who lived in other places besides the three
previously mentioned places.

The reason that most debtors do not own a house or an apartment could be that they
do not have any house or apartment prior to the start of the bankruptcy case or they used to
have one, but it had already been seized in the previous civil case or in this bankruptcy case.
The debtor could repay some of their debts by transferring the ownership in their house
instead of cash payment before entering bankruptcy.

With regard to debtors who said that they own a house, three out of thirteen houses or
apartments were repaying mortgages. About 13 percent (61 debtors) of the debtors had to pay
monthly rent, with the average rent per month was about 3,162 THB.

Living with someone without having to pay any rent certainly helps the debtors
sustain their standard of living. The debtors are in an insolvent stage and their stream of
income is not the same as before. Moreover, the debtor is not allowed to enter into any
transaction regarding his or her assets or business without approval from the court,
bankruptcy trustee, or the creditors’ meeting under section 24 of the Thai Bankruptcy Act.

The follow-up question is who allows the debtor to stay in his or her house or
apartment without charging any money? The answer is that those who have close
relationships to the debtors come to the rescue. Relatives\(^{47}\) constitute 23.7 percent (70 cases) of 295 cases. Approximately 21.0 percent of the debtors (62 debtors) clearly stated that they lived with their brother or sister while another 20.7 percent (61 debtors) lived with their grown working children.\(^{48}\) Parents giving their insolvent children a place to stay constituted 13.9 percent (41 cases) of the sample. Other people that provided free shelter included the debtor’s uncle, aunt, friend, employer, and spouse.

The scenario where the relatives and those that have a close connection with the debtor come to assistance in terms of dwelling place provides a better perception of the current Thai culture of helping each family member out in time of financial crisis. Although only 36.5 percent (157 debtors) of 430 debtors give financial aid to the debtor, Thai families (86.8 percent or 256 cases out of 295 cases) are very helpful in providing free accommodation. Therefore, strong Thai family values are not totally missing from society.

\(^{47}\) Many people may wonder who is the debtor’s relative? According to the trustee’s standard form, this is an open-ended question. Therefore, it is subject to the trustee’s insistence as to whether he or she will push for a specific answer from the debtor on this question. “Relative” is certainly a generic term. In this context, “relative” could mean uncle, aunt, nephew, niece, or other related persons through the marriages of the debtor and the debtor’s spouse. Thus, we may never know for sure who this relative is.

\(^{48}\) A senior citizen is defined by the National Statistical Office as a person who is above sixty years old. From the information in 2007, 10.7 percent of the population are senior citizens. 92.3 percent of the senior citizens do not live alone while 7.7 percent live alone. Among senior citizens who do not live alone: 24.4 percent live with spouse, children, and relatives, 20.7 percent live with children and relatives, 17.6 percent live with a spouse, 12.2 percent live with a spouse and children, 10.1 percent live with a spouse and relatives, 7.4 percent live with relatives, 6.2 percent live with children, and 1.4 percent live with other persons (National Statistical Office 2012).
C. The Debtor’s Financial Picture: Liabilities and Assets

TABLE 4. Summary Financial Statistics

Table 4 presents statistics for the financial portraits of individual debtors in the Thai bankruptcy system from 2007 to 2010. The first number is the mean while the second is the median. Both are amounts in THB.

<table>
<thead>
<tr>
<th>Previous Monthly Income</th>
<th>30,821 (10,550)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Monthly Income</td>
<td>3,285 (0)</td>
</tr>
<tr>
<td>Total Assets</td>
<td>125,974 (0)</td>
</tr>
<tr>
<td>Total Debt</td>
<td>12,300,000 (3,268,388)</td>
</tr>
<tr>
<td>Secured Debt</td>
<td>3,045,470(0)</td>
</tr>
<tr>
<td>Unsecured Debt</td>
<td>9,309,529 (2,632,775)</td>
</tr>
</tbody>
</table>

1. The Debtor’s Liabilities

a. Total Numbers of Creditors and Total Amounts of Debt

The majority of the debtors have just one creditor. After defaulting on a single contract, the debtor then finds himself or herself caught up in the bankruptcy web. The number of creditors for each individual debtor range from one creditor to twelve creditors. 52.9 percent (524 debtors) out of 991 debtors have one creditor, 24.8 percent (246 debtors) have two creditors, 11.1 percent (110 debtors) have three creditors, and the remaining 11.2 percent (111 debtors) have four creditors or more.

The average for the total amount of debt that each debtor carried is twelve times higher than the minimum threshold of indebtedness while the mid-point of debt stood at more than three times of the same threshold. The mean of the total amount of debt was 12,300,000 THB while the median was 3,268,388 THB. The median of debt that the debtors had was...
almost thirty times higher than the average household debt. 49 25 percent of the debtors had at least 7,073,033 THB.

b. Unsecured Creditors and Unsecured Debts

The number of unsecured creditors for each individual debtor ranged from one creditor to twelve creditors. 54.8 percent (545 debtors) out of 994 debtors had one unsecured creditors, 21.0 percent (209 debtors) had two unsecured creditors, and 10.4 percent (103 debtors) had three unsecured creditors. Just 4.9 percent of the debtors (49 debtors) had no unsecured creditor. The mean of unsecured debts was 9,309,529 THB whereas the median stood at 2,632,775 THB.

The top unsecured creditors included banks, asset management companies, and a credit card company. Out of 943 cases, 13.9 percent were Bangkok Bank, 13.1 percent Krung Thai Bank, 9.4 percent Siam Commercial Bank, 7.6 percent Government Housing Bank, 5.2 percent Bangkok Commercial Asset Management company, 4.5 percent Krung Thai Card company, 4.4 percent Sukhumvit Asset Management company, 4.2 percent Ayudhya Asset Management company, and 1.6 percent the Revenue Department.

The types of unsecured debt were as follows. Out of 906 cases, 75.7 percent were judgment debts, 8.4 percent credit card debts, 5.9 percent general loan debts, 3.8 percent auto leasing debts, 2.2 percent tax debts, and 2.1 percent guaranty debts. These numbers signify that the majority of creditors who file a proof of claim in bankruptcy cases have already filed a civil complaint against the debtor and won the case. Following as a distant second is credit card debt which usually by itself cannot exceed the minimum threshold amount of indebtedness; credit card limit is usually set at 50,000 – 200,000 THB.

49 In 2007 the average debt per household was 116,881 THB while in 2009 the average debt per household was 134,699 THB. For the first six months of 2011, 56.9 percent of the total households had debts. The average household debt was THB 136,562. The causes of these debts include: 36.4 percent for buying or renting a house and/or land, 36.1 percent for household consumption, 14.0 percent for investment in agricultural business, 9.5 percent for investment in general business, 2.1 percent for education, and 1.9 percent for other purposes (National Statistical Office 2012).
c. Secured Creditors and Secured Debts

At least four-fifths of the debtors (82.0 percent of 983 debtors) had no secured creditor. For the remaining approximately one-fifth, 15.3 percent (150 debtors) had one secured creditor and 2.5 percent (25 debtors) had two secured creditors. The average secured debt stood at 3,045,470 THB whereas the median was 0 THB. 10 percent of the debtors had at least 3,500,000 THB.

The major secured creditors are asset management companies and banks. Out of 177 cases, 23.5 percent were Sukhumvit Asset Management company, 13.5 percent Bangkok Commercial Asset Management Company, 8.5 percent each for Krung Thai Bank and Bangkok Bank, 7.5 percent Government Housing Bank, 6.0 percent Ayudhaya Asset Management company.

Judgment debt was also the leading type of secured debt that the debtor had. Out of cases with secured debts, 78.6 percent were judgment debts and 19.6 percent general loan debts.

d. Comparison of Unsecured and Secured Debts

58.8 percent (474 debtors) of the 806 debtors had only one unsecured creditor without any secured creditor, while 22.3 percent (180 debtors) had two unsecured creditors with no secured creditor. Only 5.0 percent (49 debtors) out of 983 debtors had either one or two secured creditors without any unsecured creditor. These findings seem to suggest that by the time the debtor is in bankruptcy procedures, most cases have no collateral involved. Since 82.7 percent of the debtors were sued because of defaults on the lending agreement, there are two scenarios to describe in more detail concerning the experience of the majority of debtors. The first version involves a lending agreement where the debtor has requested a general loan agreement with no collateral requirement or with purely a personal guaranty. The second possibility is that before entering bankruptcy, the creditor had already sued the debtor in the
civil case and foreclosed all the available properties. Therefore, there is nothing left in terms of security for the same contract, just the unsecured deficient amount.

Regarding the amount of unsecured and secured debts, it is surprising to learn that the average amount of unsecured debts was three times higher than the amount of secured debts. I first thought secured debts on a house or a car were more than general unsecured debts. Also, the leading unsecured creditors are banks while the prominent secured creditors are asset management companies which bought debts from financial institutions. One significant similarity between the unsecured and secured debts for the bankrupt is that the judgment debt is the outright majority type of debt.

e. Tax Creditor

Tax debt plays some part in plunging certain debtors into financial woe; out of 906 cases, 2.2 percent were tax debt. The tax creditor in each case was the Revenue Department. On average, the debtor owed 37,687 THB. Many debtors did not elaborate on the type of tax that they owed. For those who provided such information, some of them owed Specific Business tax as a result of selling their houses or lands.

f. The Debtor’s Involvement in Civil Cases

Creditors of the debtor can also come from previous litigations as well as pending court procedure. The trustee asks the debtor about their involvement in the civil case for at least two reasons. The first reason concerns the assets seized or attached in the previous civil case. If the debtor was formerly sued in the civil case and the execution of the civil case judgment has not been completed, generally speaking, the trustee has to ask the executing officer in the civil case to transfer the debtor’s assets or the proceeds from the sale of such property to the trustee. The trustee then completes the gathering of the debtor’s assets and distributes such property among bankruptcy creditors according to their priority.50

50 See Bankruptcy Act §§ 111,112 (2004).
Second, in case the debtor has any ongoing civil cases at the time the court issues a receivership order, the debtor does not have any power to continue that case by himself or herself. The competence to litigate the debtor’s case is transferred to the trustee under section 25 of the Bankruptcy Act. In practice, the trustee usually does not continue any civil case litigation. They employ an alternate solution offered in section 25; the trustee files a petition to the court asking for dismissal of the civil case and informing the plaintiff in the civil case to file a proof of claim within a designated time in the bankruptcy case.

From the above reasoning, the trustee therefore should ask at least two separate questions concerning the connection in a civil case of the debtor: (1) has the debtor been sued in the civil case, and (2) does the debtor have any pending civil cases? However, looking through the debtor’s files on this particular issue, the trustee did not ask both questions consistently. More specifically, there was only one out of 430 cases in which the trustee asked both questions. While there were nineteen cases that had information pertaining to the second question, eighteen out of those had no information pertaining to the first question. This situation certainly needs explanation. It could be that there are no strict guidelines instructing the trustee to ask both questions. Or perhaps the first question is perceived by the trustee as more important in terms of the probability of finding assets especially if there is any information in the seizure or attachment in the civil case. Alternatively, the trustee may not know the significance of inquiring into these two issues separately. Needless to say, if the trustee does not ask the second question, the plaintiff in the civil case may never be fully aware of the on-going bankruptcy case and may lose its chance of getting any share from the bankruptcy estate because of failure to file a proof of claim in time. Nonetheless, from the nineteen respondents, none of them had any pending cases.

Consider the first question about civil cases: 36.7 percent (158 debtors) out of 430 debtors said that they had been sued in civil cases while 50.5 percent (217 debtors) said that
they had no civil case record. The most interesting finding came from the remaining 12.8 percent (55 debtors) who said that they were not sure. If we could treat the ‘not sure’ answer as ‘yes’, then the proportion of the debtors in bankruptcy cases who were and were not litigated against in civil cases before bankruptcy was roughly the same. Among those who were sued in civil cases, 86.7 percent (130 debtors) out of 150 debtors were sued in a single case and 9.3 percent (14 debtors) were litigated against in two previous civil cases. For these two questions, I do not think there is any reason for the debtor to hide the truth from the trustee. Thus, the available data should be reliable.

2. The Debtor’s Assets

One of the main goals of bankruptcy law is to collect the limited assets of the debtors and distribute such properties among the debtor’s creditors in an orderly manner. Generally speaking, the creditors thus expect to get some, if not full, repayment from the debtor through the bankruptcy procedure. Without any legal requirement, if a creditor knows in advance that it will not get anything out of the bankruptcy system, it may never initiate the court process or even file a proof of claim in the first place. There are always transaction costs involved in the court litigation and contacting with the government agency: the court’s fees, the administrative fee, the attorney’s fees, and the trustee’s fees. A cost-benefit analysis would suggest not to venture into any activity without the feasibility of gaining any economic benefit.

The data from this project show a difficult-to-swallow truth for the creditors under the Thai bankruptcy system. 88.2 percent (405 cases) out of 459 available files were no-asset cases. For asset cases, the mean of the assets stood at 125,973.9 THB. The computation of the asset-to-debt ratio stood at 0.04 meaning that in an asset case the creditor received four satang for every baht.51

51 1 THB = 100 satang.
With a meager rate of return, there seems to be no rationale behind starting a bankruptcy case. Then why did the creditors still commence annually over 13,000 cases in the past five years? Perhaps provisions of the Tax Code and Finance Ministerial Rules are keys to unraveling this puzzle. Under section 65 bis (9) of the Tax Code and the Finance Ministerial Rules No. 186 (B.E. 2534(1991CE)), No. 221 (B.E. 2542 (1999 CE)), and No. 225 (B.E. 2542(1999 CE)), any company and partnerships who would like to write off and receive a tax deduction for their non-performing loans need one of the following four types of evidence: (1) evidence showing that there is no longer any chance the amount owed will be paid, (2) a civil-case judgment, (3) a bankruptcy judgment against such debtor, or (4) evidence showing adequacy of 100 percent bad debt reserve for the potential loan loss.

Even though a bankruptcy judgment is only one of four ways for a juristic person to claim a business bad debt, bankruptcy judgment is the best definitive way to show that the creditors have already exhausted all the remedies. Since the majority of creditors are financial institutions, the boards of directors of these entities have a fiduciary duty to the shareholders. To assure accountability to the shareholders and avoid future liability, bankruptcy judgment is the best proof of a non-performing loan. My hypothesis is that the creditors initiate the bankruptcy case to get the bankruptcy judgment to write off bad debts.

The practices by the creditors are then subject to debate. Their choices may inadvertently create additional work at the Central Bankruptcy Court and the Legal Execution Department especially since almost 90 percent of bankruptcy cases did not yield any monetary benefit to the creditor.

From the responses given in the interviews, writing off a bad debt is just one of many purposes of initiating bankruptcy litigation; however, to my surprise, it was not the foremost aim. All interviewed financial institutions insisted that the main purpose of commencing the bankruptcy case was to get their money back. They employed a bankruptcy procedure as
a last resort in collecting their debt after the typical debt collection procedure and the civil case lawsuit failed. One bank claimed that after the debtor received copies of the bankruptcy complaint, the majority of debtors came to talk with the creditor. Second, the bankruptcy process forces a debtor to reveal any remaining assets. For those who still have assets and do not want to go bankrupt, they have to disclose their assets at the hearing. In these cases, although the creditor may lose the bankruptcy case, the creditor knows exactly where to find the debtor’s assets. If the debtor really has no assets, the creditor can learn that the debt is inevitably uncollectible and have the proof to write off such a bad debt. This practice minimizes the risk for the board of directors of the financial institution as regards criminal liability. It could be said that the bankruptcy procedure has been used as a final legal tool to scrutinize the assets of the debtor. Third, bankruptcy law is a mechanism to gather all the debtor’s property and distribute it to the creditors in an orderly manner according to their status and priority. Fourth, sometimes creditors have better rights in the bankruptcy case. For example, the government official’s salaries and wages are exempt from garnishment in the civil procedure, but not in a bankruptcy case. Fifth, as a result of a receivership order, the debtor cannot make any transactions related to their assets without approval or permission of the bankruptcy trustee or the court. This rule prevents the debtor from creating more debt that they may not be able to pay or from depleting the limited assets that they do have. Moreover, the bankruptcy trustee has avoiding powers in revoking any preferential or fraudulent transfers to bring back those properties. Sixth, in a few cases which involve a large amount of debt in which the debtor has not cooperated with the creditor regarding the debt restructuring after defaulting, some creditors employed a bankruptcy suit simultaneously with civil case litigation to force the debtor to the negotiation table. Seventh, after writing off bad debts, the bad debt reserve can be retrieved. The uncollectible sums are treated as expenses for the
financial institution and are used as a deduction from the revenue for that particular tax year. The net amount is a tax base for calculating the tax that the financial institution has to pay.

Regarding the types of assets that the debtors had, according to the standard form, the assets are divided into nine groups: (1) money deposited in the bank, (2) cash, (3) money given to a lawyer for the bankruptcy lawsuit, (4) merchandise in the store, (5) furniture, (6) jewelry, (7) land and home, (8) life and property insurance, and (9) other properties.

The creditor’s hope of getting any repayment is from the debtor’s money deposited in the bank and the debtor’s life insurance. 6.3 percent (29 debtors) of 460 debtors had money deposited in the bank. The average deposit was 1,592 THB. 15.2 percent (19 debtors) of 125 debtors had life insurance as their asset. However, the value of this insurance cannot be determined. In practice, usually what happens with existing life insurance is that the trustee will terminate the policy and recover whatever is left from the insurance company. The remaining amount of money depends on the premium that the debtor has already paid and the percentage that the insurance company promises to pay back in case of early revocation of the policy. Concerning other kinds of properties, a few debtors had them. Only one debtor had 1,000 THB cash on his person. No debtor reported that he or she had given any money to the lawyer or had any merchandise in his or her possession. Merely 1.3 percent (6 debtors) out of the 459 respondents indicated valuable furniture at their place and only one debtor said that she had 24,000 THB jewelry. From 458 debtors, 0.7 percent (3 debtors) had either land or home or both. 0.3 percent (3 debtors) of the 460 debtors reported other types of property, namely a motorcycle in the amount of 10,000 THB, shares of the debtor in partnership worth 200,000 THB, and the right from a court judgment to receive payment from a third party in the amount of 5,000 THB on a monthly basis.

Furthermore, 0.4 percent (2 debtors) of 459 debtors had the right to receive payment from a third party. In this kind of asset, the trustee usually sends a letter requesting those
parties to send the money or deliver the goods to the trustee instead under sections 22(2), 118, and 119 of the Bankruptcy Act.

a. The Current Monthly Salary of the Debtor and Other Sources of Income Gained by the Debtor

Another type of a debtor’s assets for the trustee to collect and distribute to the creditors is monthly salary. This is an asset that generally generates continuing income that the trustee can garnish as long as the debtor is under the bankruptcy process according to section 109(1)(2) of the Bankruptcy Act. However, at the time of the financial examination by the trustee, 56.7 percent (249 debtors) of 439 debtors did not have any income at all, 25.0 percent had at least 3,600 THB, and only 10.0 percent had at least 10,000 THB. The debtors earned on average approximately 3,285 THB. This average monthly revenue of the debtor is extremely low as compared to the general working population.52 This is also in stark contrast with the debtor’s monthly income before bankruptcy. With roughly the same amount of observations for 430 cases, the mean of the debtor’s monthly revenue stood at 30,821.3 THB and also at least 50 percent of the debtors received at least 10,550 THB each month. Does bankruptcy deprive the debtor of almost 90 percent of their monthly fortune? Future work should explore whether the debtor loses employment in the period immediately preceding the bankruptcy.

This circumstance raises the question of how the debtor survives in his or her daily life.53 One pessimistic view of this lower-than-expected monthly salary of the debtors is that they did not tell the trustee the truth about their current stream of income. Why? If the debtor tells the trustee that he or she receives salary from a government agency or any private or

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52 In 2007 nationwide average monthly income per household was 18,660 THB. In the first six months of 2011, countrywide average monthly income per household was 23,544 THB. In 2010, average monthly income per household for government officials was 43,650 THB (National Statistical Office 2012).
53 In 2007, nationwide average monthly expenditure was 14,500 THB. In the first six months of 2011, countrywide average monthly expenditure per household was 17,861 THB. In 2010, average monthly expenditure per household for government officials was 32,386 THB. All the expenditures in this footnote are all expenses excluding long-term debt such as buying house or land per household (National Statistical Office 2012).
public company, his or her money will be garnished by the trustee according to sections 19, 67(1), and 121 of the Bankruptcy Act. Even though the debtor realizes or does not realize that giving falsified information can result in criminal punishment and extension of the discharge period, they may take their chances. If the bankruptcy trustee or the creditors are not aware of this stream of income, the debtor can enjoy this money fully.

Another explanation could be that the debtor has sources of income other than that from an employer. One question asks the debtor whether he or she receives monetary assistance from any of his or her relatives or not. If the answer is yes, how much does the debtor get each month? It turns out that 36.5 percent (157 debtors) of 430 debtors receive financial aid from one of their relatives. Regarding the amount of financial assistance that the debtor receives, the average is approximately 2,717 THB with half of them receiving at least 2,000 THB. From these numbers, one facet of Thai culture may be put to the test. Entrenched in traditional Thai culture is that Thais assist any member of the family in need. Nonetheless, a deviation from the old norm is fairly understandable in the current economy. A large number of people face difficulty in making ends meet. Giving some part of their income to insolvent relatives may affect their own well-being. Thais still probably help their relatives out as regards other topics but not money matters. From the answers of the debtors, helpful relatives include the debtor’s grown, working children, parents, brothers or sisters, relatives, friends, and spouses. From the 71 known responses, grown, working children were the most generous at 42.3 percent (30 cases) while siblings and other relatives ranked second and third at 26.8 percent (19 cases) and 15.5 percent (11 cases) respectively.

Aggregating these two sources of income, the debtor’s overall access to income stood approximately at 4,500 THB for the mean and at 3,500 THB for the median. Before entering bankruptcy procedures, the median debt-income ratio was about 20.8, meaning

54 In 2006, the poverty line was 1,386 THB per person per month (National Statistical Office 2012).
median debtors owed twenty years of income. That is clearly a hopeless situation, suggesting that debtors who find themselves in a Thai bankruptcy court are deeply indebted indeed.

3. Preferences and Fraudulent Transfers

a. Details of Property Transferred Abroad, Transferred within One Year or Transferred within Three Months before the Start of a Bankruptcy Case.

With over 88 percent of no-asset cases and only a 4 percent dividend for creditors in asset cases, some people wonder whether the debtor actually has no assets or whether his or her assets have already been hidden, given away, or transferred to the third party either in or outside of the country before entering bankruptcy. Similar to the trustee’s power to avoid preferences and fraudulent transfers under U.S. bankruptcy law, the Thai bankruptcy law does entrust upon the trustee the power to rescind any transactions done by the debtor on the eve of the bankruptcy which result in the reduction of share among creditors or unequal sharing among creditors with the same priority.

The debtor may want to conceal his or her assets from the trustee to avoid any seizure or attachment of the properties. If successful, the debtor may have more assets to enjoy for their fresh start. This transfer if allowed would result in the creditors getting paid less than they should get. Therefore, sections 113 and 114 of the Bankruptcy Act empower the trustee to rescind any of this “fraudulent transfer.” One of the assumptions on this legal issue is that any transaction that has taken place before or after one year of the commencement of the bankruptcy is deemed a “fraudulent transfer.” Hence, these provisions are the reason for the question asking about the details of property transfer within a year. Other fraudulent assumptions include the debtor distributing his properties without getting anything in return or the debtor receiving less than a reasonably equivalent value in exchange for such transfer.55

Furthermore, when the debtor is near insolvency, it may be their preference to pay off some of their debt to certain creditors. This may happen because of the personal relationship

55 See Bankruptcy Act §§ 113 and 114 (2004).
between the debtor and that creditor, the expectation to continue trading after the bankruptcy, or for other reasons. Nonetheless, allowing the debtor to repay some legal obligations out of limited assets is against the bankruptcy policy of equal sharing among the creditors with the same priority. Under sections 115 and 116 of the Bankruptcy Act, the law gives a trustee the power to revoke any of this “preferential transfer.” Any transaction done three months prior to or after the initiation of the bankruptcy case is presumed to be a “preferential transfer.” This is why the trustee has to ask the debtor about the details of property transferred within the preceding three months.

The Thai Bankruptcy Act undoubtedly provides the trustee with sufficient legal mechanisms to retrieve any illegal transfer of the debtor’s assets. However, in practice, the difficulty in enforcing these provisions is the burden of proof resting upon the trustee. The trustee and perhaps some interested party, i.e. creditors may have to do their utmost best to find facts to support their case. According to the standard form, there are direct questions on the issue of fraudulent and preferential transfers as mentioned in the previous paragraph that are meant to help the trustee find the required elements. Nonetheless, it would be strange to get information on these issues from the debtor, a person who may circumvent the law. Also, the debtor is the one who has to sustain the most damages from the termination of the asset transfer. Even though the trustee may let the debtor know about the civil and criminal consequences of giving false information to the trustee, the debtor may not cooperate.

My above assumption is strongly supported by the fact that none of the 457 debtors gave information that they transferred any property one year prior to or after the start of the bankruptcy procedure which may be deemed a fraudulent transfer. Also, only 0.7 percent of them (3 debtors) said that they transferred property three months before or after the commencement of the bankruptcy case that can be considered preferences. With regard to
the question about details of property transferred abroad, none of the 448 respondents said they had done so.

Two explanations may be offered concerning this phenomenon. First, some of them may not be telling the truth to the trustee. Second, those who said no really did not make any transfers at all. To my mind, the second argument is more plausible. For an ordinary individual, the properties that we usually own are our house or apartment, a car, some cash and personal property, e.g. jewelry or home furniture. After the seizure of the debtor’s house or car, in a previous civil case or in bankruptcy case, the debtor practically does not have any valuable property left. Therefore, the majority of them probably told the truth that they did not transfer any property within the designated time by law or did not transfer any assets abroad.

V. Recommendations

A. Restricting Consumer Lending?

Since 82% of causes behind creditors’ bankruptcy filings were defaults on a loan agreement, perhaps creditors should restrict consumer lending especially by reducing risky loans. There are two levels of regulations which mandate how a financial institution can approve a loan: the central bank’s rule and the internal guidelines of each institution.

The Bank of Thailand (BOT), the equivalent of the central bank of other countries, has issued policies and regulations regarding how financial institutions should offer loans to their customers. The BOT categorizes consumer loans into three types: (1) housing loans, (2) credit card loans, and (3) personal loans. Nonetheless, the BOT does not regulate any commercial loans. Broadly speaking, the financial institutions need to have overall lending policies regarding the types of loans that they offer, the limit of the total amount lent, the loan analysis process, the loan approval process including responsible officers, and the risk management system. Also, the BOT has suggested that financial institutions examine the
following documents before advancing loans: (1) the current status and future of the debtor’s financial well-being, (2) the debtor’s repayment capacity, (3) other obligations that the debtor may have to other creditors and all the personal and real properties that the debtor may have (BOT Policy on Lending Transaction dated August 3, B.E. 2551 (2008 CE)). Furthermore, the BOT has released guidelines regarding guaranty agreement by an individual or juristic person. The essence of this guideline is that the guaranty agreement must specify the exact principal amount and the limitless guaranty agreement is not allowed (BOT Policy on Guaranty Agreement by an Individual or Juristic Person dated January 27, B.E. 2552 (2009 CE). Concerning credit card eligibility and personal loan, there are two significant requirements. First, the applicant must have income of at least 15,000 THB per month, and, second, the spending limit of each credit card or the approved amount of personal loan cannot exceed five times the applicant’s monthly revenue (BOT Policies on Credit Card Business dated August 4, B.E. 2552 (2009 CE); BOT Policies on Personal Loan dated August 25, B.E. 2549 (2006 CE) and August 3, B.E. 2551 (2008 CE)).

Moreover, another indirect means of the BOT ascertaining that financial institutions exercise prudent judgment in offering a loan is through the requirement of a bad debt reserve. When the loan is more than three months past due, the BOT requires the financial institutions to set aside money to cover 100% of potential loan losses – that is the difference between the outstanding debt and the present value of the expected cash that would be received from the customer or the difference between the outstanding debt and the expected present value of cash that would be received from the sale of the collateral (BOT Policy on the Classification of Non-Performing Asset and the Bad Debt Reserve dated August 3, B.E. 2551 (2008 CE)). The allowance of bad debts is a cost to financial institutions in doing business. The financial institutions certainly do not want to put lots of money in this type of reserve; they would rather use this money to make transactions that yield more profit. The financial institutions
therefore have an incentive to make sure the debt does not become delinquent for more than ninety days. In case a borrower falls behind this prescribed date, financial institutions need to come up with a solution that return this account back to normal status (less than three-month delinquency) as soon as they can.

Interviews with fifteen financial institutions in summer 2012 proved all agencies were aware of the BOT’s policies and regulations. In addition to that, financial institutions shared to a large degree identical procedure in evaluating loan offerings. The five credit factors taken into account comprised the following: character, capacity, capital, collateral, and condition. The purpose of the assessment is to make sure that the money lent will be returned with interests according to the signed contract.

1. Character: a borrower must be above twenty years old, an age at which the law allows the individual to perform any juristic act and not over sixty or sixty-five years old – the general retirement age of the government officials or those who work in the private sector, respectively. The upper age limit also affects the length of the repayment period. The last installment must be paid before the borrower turns sixty or sixty five. The stability of the customer’s occupation is also included in this factor. Examples of reliable careers are physicians, engineers, judges, and public prosecutors. Furthermore, the Anti-Money Laundering Office (“AMLO”) announces a list of businesses whose related transactions financial institutions need to report to the AMLO. Thus, those who make a living in these businesses (such as a financial advisor according to the security regulation law, jewelry seller, car or car leasing seller, real estate agent, antiques seller, among others) are deemed having risky or unstable careers (Anti-Money Laundering Act B.E. 2542 (1999 CE) § 16; AMLO announcement dated June 8, B.E. 2554 (2011 CE)).

2. Capacity: Income is one significant indicator of the capacity to return payment. Financial institutions need to know whether the borrower receives a regular income from the
government, private companies, or his or her businesses. To qualify for any retail loan, a customer has to make at least 15,000 THB a month. The client can have more than one source of income. What financial institutions would like to know is the average total earnings on a monthly basis. The clients can satisfy this requirement by providing a verification letter from their employers or bank statements. At some financial institutions, the stability of the employer is also taken into consideration. Working at a public limited company receives a better credit score than working at a private company. Indeed, some lenders check whether or not the company the debtor is working is listed in the Top 2000 companies in Thailand.

Furthermore, the borrower’s credit history is examined through the usage of available information from the National Credit Bureau (NCB). Data from NCB reveals the past repayment history such as whether the debtor has ever defaulted or not, as well as the current liabilities that the client has with other creditors. This detail is very important in calculating the present repayment capacity of the borrower. Nonetheless, the information in the NCB database does not incorporate the individual’s income, deposit, repayment history of utility bills, and information of guarantor. If the customer is a long-standing one of the financial institution, the entity can obviously look at its own past repayment records. Some banks have a guideline to restrict the amount of monthly installment payments depending on individual earnings. For example, in case the borrower has monthly earnings of less than 30,000 THB, each monthly installment cannot exceed 40 percent of the income. If the borrower earns less than 50,000 THB, the cap for each installment cannot surpass 50 percent of the earnings. If the borrower has a loan application approved at other institutions, this is a plus in considering the capacity of such client. If such client is a businessperson, the financial institution will want to see the debt-to-equity ratio.

3. Capital: In the case of a consumer loan, collateral refers to the amount of down payment that the customer places when signing the contract. The amount of down payment
will affect the length of the loan terms and the number and amount of installments for repayment.

4. Collateral: Adequate protection in the price and quality of the collateral is important. Lenders need to make sure that the property appraisal is accurate including the potential decline in value of the collateral. Most banks set their loan to value (LTV) ratio between 70-90 percent of the appraised or selling price. Even though there is a central appraisal price of land by the Treasury Department, Ministry of Finance, there are other private appraisal companies in the market as well. No single standard of asset assessment exists; some commentators pointed out that this is another weak point in collateral evaluation. To ensure the transparency in all financial institutions, the evaluation unit is separated from the loan unit. In the case of car purchasing, the type, brand, age, and resale value of such car will be considered.

Regarding credit card spending limit and personal loan allowance, the maximum amount of the credit line is at five times the borrower’s earning. Whether the maximum is extended depends on each bank’s financial policy at that time.

5. Condition: Condition includes the amount of the loan and loan terms which must be commensurate to loan purposes and the necessity of the individual or business at that time. It can also encompass the economic and political climate at the time of loan request. Additionally, the financial institution’s policy at any given time affects the loan amount and terms. For instance, if financial institutions want to gain more market share in a retail market or in the market for small and medium enterprises, borrowers in such sectors would possibly benefit from a greater approval rate. At one bank, if the loan officer finds out that the borrower has been sued in a civil case or bankruptcy case or had assets put up for public auction, the officer will stall the loan process.
The loan officer will input all the relevant data mentioned above into a scoring system. Some banks employ the software called loan origination system, others use their own proprietary software or even simply an Excel spreadsheet in doing credit classification. Different factors carry different weights in the calculation depending on each financial institution’s policy. The programs usually show an end result in the form of pass or fail. If a customer fails the scoring system and the bank decides not to extend the loan, the financial institution must send a written letter explaining the disapproval to the borrower (BOT Policy on Loan Rejection Procedure dated January 20, B.E. 2553 (2010 CE)). Nonetheless, the borrower whose loan application is not successful can file another at any time. To increase the chances of loan approval, the client should provide information concerning additional earnings and more collateral, while finding a guarantor or co-debtor.

One question that was asked to all loan officers was “do you have different criteria in approving loans above or below 500,000 THB and above or below 1,000,000 THB?” The thinking behind this question was that the requirement for writing off bad debts in an amount of above or below 500,000 THB is different. To charge off more than 500,000 THB of your debts requires more evidence and takes more time to prove. The 1,000,000 THB amount is the minimum debt that the debtor must owe for the creditor to commence a bankruptcy case. My hypothesis was that creditors would put more effort into gathering information and the decision process for loans exceeding 500,000 THB and 1,000,000 THB. Surprisingly, these loan thresholds do not appear to trigger greater effort from the lender. The approval procedure does not consider the legal ramifications if the debtor defaults. Rather, the granting of a loan is in accordance with the methods described in earlier paragraphs. Nevertheless, loans in excess of 500,000 THB usually require collateral or a guarantor.
The last question that I asked the loan officers was about personal consequences to the loan officer in case the borrower defaults, has been sued in the civil court, or has been sued in the bankruptcy court. The answers were as follows: if a loan officer approves a loan according to the guidelines of the financial institution, the loan officer is not personally liable for the defaulted amount. The event of default, nevertheless, affects the work assessment of such personnel. If the frequency of the defaulted loan increases, more credit evaluation training may be needed for that loan officer. Alternatively, the loan officer may be transferred to another department. If it is considered an act of fraud, criminal investigation follows.

Studying the lending criteria of the BOT and the additional implementation by the Thai financial institutions, it appears that the current approval procedure is of a reliable standard. Thai financial institutions’ gross non-performing loans (Gross NPLs) – that is the NPLs before deducting the amount of the bad debt reserve – in the last quarter of 2006 to 2011 were 7.6, 7.3, 5.3, 4.9, 3.6, and 2.7 percent of total loans respectively (Bank of Thailand 2012). The net non-performing loans (Net NPLs) – that is the NPLs without adequate coverage of the bad debt reserve – during the same time period were 4.1, 4.0, 2.9, 2.7, 1.9, and 1.4 percent of total loans respectively (Bank of Thailand 2012). From the BOT’s perspective, as long as the financial institutions have large enough existing doubtful debt reserves, they are not concerned. Since the level of net NPLs in the past six years keeps decreasing and stood at just 1.35 percent in 2011, the BOT is not particularly worried. The evidence may indicate that the current lending practices are not lax to the point that they need an overhaul. As to what the optimal amount of gross NPLs and net NPLs in the market economy is, is debatable. Lower delinquency rate is understandably preferable. Policies to lessen such amount have to be weighed against the implementation cost. Needless to say, even if all financial institutions have already had robust lending criteria, this conclusion still does not help individuals who find themselves in bankruptcy each year.

To write off a bad debt of more than 500,000 THB, the company, partnerships, or financial institution needs one of the following four types of evidence:

(1) Evidence showing that the creditor has already pursued reasonable efforts in trying to collect this debt with clear debt collection evidence and had still not received repayment as well as (1.1) the debtor is dead or is a missing person and has no asset to repay his or her debt or (1.2) the debtor stops running his or her business and has other creditors who have priorities over the properties of the debtor in the amount more than the value of the debtor’s assets;

(2) Evidence showing that the creditor has sued the customer in a civil case, won the case, and the court has already issued a writ of execution to enforce the judgment, but the debtor does not have any assets to be seized or garnished; or the creditor files a request to share from the proceeds of the sale of the debtor’s properties in other civil cases, but there are no assets left to share;

(3) Evidence showing that the creditor has sued the client in a bankruptcy case or filed a proof of claim in a bankruptcy case initiated by other creditors and in such case the court has confirmed the debtor’s repayment plan or the court has adjudged the debtor a bankrupt and the first distribution of the debtor’s assets has already occurred; or

(4) Evidence showing that the creditor has already set aside the bad debt reserve for 100 percent of potential loan losses, that is the difference between the outstanding debt and the present value of the expected cash that would be received from the customer or the difference between the outstanding debt and the expected present value of cash that would be received from the sale of the collateral.
Since 88 percent of the cases are no-asset cases and there is only a 4 percent return for an asset case, the current practices by the creditors’ bankruptcy filings virtually bring no repayment back to the creditors. According to the Tax Code and Financial Ministerial Rules, the juristic creditors need just one required item of evidence out of four to write off their non-collectible debts. The creditors can decide to employ the civil-case judgment and the issuance of writ of execution instead of bankruptcy judgment as evidence that the debtor actually defaulted on this obligation and there is no hope of recovery.

Selected usage of bankruptcy filing in an asset case not only reduces the backlog at the Central Bankruptcy Court and the Ministry of Justice, but also allows all interested parties to focus all the resources on collecting the debtor’s properties and distributing them to the creditors.

C. Debtor Education

Some Thai bankruptcy practitioners suggest, and I agree, that some debtors may not realize that they have to pay the remaining deficiency after the public auction in the civil case. The outstanding deficiency by itself or the deficiency plus interest over time can exceed minimum threshold amount of indebtedness and lead the creditors to start the bankruptcy’s filing. Debtor education therefore would be one way to give the debtor some awareness about their legal rights and duties.

D. Protection against Discriminatory Treatment Due to Bankruptcy Judgment Needed

One consequence of the Thai bankruptcy judgment that may strike many US bankruptcy lawyers as odd and outdated concerns the job security of the debtors who are put under the bankruptcy judgment. Specifically speaking, any government official or teacher who is bankrupt will be disqualified from their respective services. 56 This sanction only

56 See Civil Servant Act §§ 36 b. (6) and 110(3) (2008) and Teacher and Academic Professional Act §§ 30(9) and 110(3) (2004).
punishes the debtor without increasing any creditor’s recovery on the creditor’s behalf. This consequence therefore should be repealed.

A provision like section 525 of the US bankruptcy code should be introduced into the Thai Bankruptcy Act. No government may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been placed under bankruptcy judgment. The rationale being that the creditors do not get more money while simultaneously the bankrupt’s family suffers income loss.

VI. Conclusion

The credit system plays a vital role in the economic development of any developing country including Thailand. The advantages of a market-based economy certainly outweigh the downsides. With the credit facilitation provided by financial institutions, consumers have more purchasing power, contributing to a better quality of life. More consumption improves the economic expansion of the country. Nevertheless, overall growth does not help everyone. This is evidently shown from the number of Thai bankrupts described in this research. There were individuals who struggled to stand on their own two feet. Their defaults on a loan agreement could come from uncontrollable external factors such as the national, regional or global economic crises, natural disaster, unrest, and so forth. The Bank of Thailand may be content with the current rate of the net non-performing loans rate, but that indicator alone overlooks the debtor who is as equally important as the creditor in the lending business. Undeniably more research related to the debtor in Thailand needs to be conducted to answer the many questions this research has raised. I hope very much that this project has provided a strong groundwork for future exploration.
CHAPTER 3: REPAYMENT PLAN IN BANKRUPTCY CASES IN THAILAND

I. Introduction

In Thailand, there is merely the compulsory bankruptcy system where a debtor can be made bankrupt only by way of the creditor’s petition. The debtor does not have an opportunity to file for bankruptcy or propose a repayment plan voluntarily. The only chance for the debtor to propose a debt agreement at will is the period before the creditors file a bankruptcy complaint. When the debtor defaults on his or her payment or is insolvent, there is usually an occasion for the debtor to look for an informal debt arrangement with his or her creditors to settle all or part of any outstanding debts. If both parties can reach an agreement, there will be no following civil suit or bankruptcy case. However, on numerous occasions the debtor has not been able to come to terms with his or her creditors. Reasons include the debtor offering too little compared to his or her outstanding debt or the creditors asking for too much beyond which the debtor is able to afford.

Moreover, after the commencement of the bankruptcy case, if the Thai debtor would like to find an option to avoid bankruptcy, a composition of debts or debt arrangement with the creditor is available to him or her after the bankruptcy court issues a receivership order or after the bankruptcy judgment has been made. When a debtor is placed under the receivership order, all of the debtor’s assets save exempted items are seized and the debtor cannot perform any juristic acts related to any assets or business. More importantly, the debtor’s salaries or wages less necessary monthly allowance are garnished throughout the bankruptcy period. In the case where the court declares the debtor a bankrupt, if such a debtor is a government official, a teacher, or an employee in some state-run enterprises, then that

57 In this dissertation, the terms “a repayment plan,” “a debt agreement,” “a composition of debts,” and “a debt arrangement” have the same meaning of a repayment in part or by other means offered by the debtors to creditors to settle all the debtor’s debts over a period of time.
58 There are two types of repayment plan under Thai bankruptcy law: a repayment plan prior to bankruptcy and a repayment plan after bankruptcy according to sections 45 and 63 of the Bankruptcy Act respectively.
individual has to quit his or her job. After bankruptcy, though legally the debtor can offer a debt agreement, in practice, the usage of this method has been rare.

What are the incentives for Thai debtors to file a repayment plan? The general assumptions are as follows. First, debtors who would be disqualified from their jobs including government officials, teachers, or workers in state-run enterprises would file. Second, the debtor who does not want any encumbrance upon his or her salaries or wages would submit a repayment plan. As one of the effects of the receivership order, the debtor’s salaries or wages are garnished throughout the bankruptcy process. Third, the debtors who concern about their credit history following bankruptcy may file. After the debts get discharged, they may find it difficult, if not impossible, to request future credit from mainstream financial institutions. The creditors may charge the debtor with higher-than-average interest due to the debtor’s record, or the creditors may demand collateral or an additional guarantor. Fourth, the debtors who do not want to be perceived as failures in life would propose a payout plan. Some people feel ashamed when they are no longer able to manage their finances or when their businesses are no longer successful.

With all these financial, social, and legal implications, it seems that filing a debt agreement is a solution for an insolvent debtor who does not want to go bankrupt to secure their careers, receive unattached earnings, maintain their credit score, or self-esteem. Therefore, it would be interesting to see from the court records the number of debtors who actually propose a composition of debts, how long is an average plan, how much repayment percentage of the total liabilities the debtors offer, how many plans get approved by the creditors’ meeting or confirmed by the Central Bankruptcy Court (CBC), and how many debtors are able to complete the debt arrangement. Additionally, the law on the books is never the complete story without elements of law in action. I interviewed financial institution creditors, bankruptcy judges, and trustees about their perspectives on these issues.
II. Analyses of Repayment Plan in Thai Bankruptcy Cases

A. Submission of the Repayment Plan

TABLE 5. Summary Demographic Statistics of Debtors who Filed Repayment Plans

<table>
<thead>
<tr>
<th>Gender</th>
<th>54.0% Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Mean = 48.4 years</td>
</tr>
<tr>
<td>Marital Status</td>
<td>39.4% Married</td>
</tr>
<tr>
<td></td>
<td>27.3% Divorced</td>
</tr>
<tr>
<td></td>
<td>15.2% Single</td>
</tr>
<tr>
<td></td>
<td>6.1% Widowed</td>
</tr>
<tr>
<td></td>
<td>12.1% Live with a permanent partner</td>
</tr>
<tr>
<td>Occupation</td>
<td>46% Employees</td>
</tr>
<tr>
<td></td>
<td>24.3% Government officials</td>
</tr>
<tr>
<td></td>
<td>18.9% Merchants</td>
</tr>
</tbody>
</table>

Only 8.0 percent of cases (37 debtors) proposed a repayment plan prior to bankruptcy to the trustee.\(^{59}\) Considering the benefits of putting forth the repayment plan as mentioned in the introductory part, the submission rate should not be this small. What then could be possible explanations for these low turnouts? First, if the debtor does not have any assets left, he or she does not have anything to put forward to pay in part or by other means to his or her creditor. The debtor may need all of his or her resources to survive on a monthly basis. Recall that 88 percent of the bankruptcy cases in Thailand are no-asset cases. Second, as a result of the issuance of the receivership order, all the debtor’s non-exempted properties are seized or

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\(^{59}\) From the database comprised of 999 bankruptcy files, there is one debtor who submitted the repayment plan after bankruptcy, which is allowed under section 63 of the Bankruptcy Act. The debtor proposed to pay 20 percent of the total liabilities, but the creditors’ meeting did not approve it. The length of this plan was not available. For the purpose of analyses in this dissertation, since there is a difference between a repayment plan before and after the bankruptcy, the information in this single case is excluded from the calculation.
attached. The seizure or attachment of the debtor’s assets may steer the debtor toward liquidation rather than creating a repayment plan. Even if the repayment plan gets confirmation from the court, all assets will be released so that the debtor can use them to fulfill obligations under the debt agreement. The debtor may prefer to wait for the three-year period to lapse to get discharged rather than paying a certain amount of money over a period of time. Third, if the debtor does not work for the government or any other employers that do not discriminate on the basis of bankruptcy, the debtor does not have any fear of losing their job as a result of the bankruptcy judgment. Thus, this group of debtors may not have urgency to file a repayment plan. From the database, only 5.9 percent out of 529 debtors were government officials.

**TABLE 6.** Factors that might influence the debtor’s decision to submit the repayment plan

<table>
<thead>
<tr>
<th>Variables</th>
<th>Debtors who filed [Mean (Median) in THB]</th>
<th>Debtor who did not [Mean (Median) in THB]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current monthly income</td>
<td>14,608 (8,000)</td>
<td>3,012*** (0)</td>
</tr>
<tr>
<td>Assets</td>
<td>1,663,686 (0)</td>
<td>3,233** (0)</td>
</tr>
<tr>
<td>Debt</td>
<td>45,800,000 (3,116,468)</td>
<td>13,900,000 (3,787,865)</td>
</tr>
<tr>
<td>Debt-to-current income ratio</td>
<td>327.1 (70.9)</td>
<td>542</td>
</tr>
</tbody>
</table>

Note: **p < 0.01, ***p < 0.001

What factors might influence the debtor’s decision to submit the repayment plan? The debtors who filed a repayment plan have greater current monthly income, more assets, less median debts, and less debt-to-current income ratio than those who did not. At the examination meeting, the filed debtor earns on average 14,608 THB with the median at 8,000 THB while those who did not file receive on average 3,012 THB with the median at 0 THB. The difference is statistically significant. The mean (median) assets of those who submitted a repayment plan were worth 1,662,686 (0) THB compared to 3,233 (0) THB for those who

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60 See Bankruptcy Act §§ 19, 22, and 121 (2004).
61 t = -6.764, p < 0.001; Wilcoxon Z = -3.790, p < 0.001.
did not. The asset difference is statistically significant. The mean (median) debt of repayment plan filers is 45,800,000 (3,116,468) THB compared to 13,900,000 (3,787,865) THB for those who did not file. The debt variation is statistically significant from the t-test but not from the Wilcoxon rank-sum test. Those who submitted a repayment plan have a mean (median) debt-to-current income ratio of 327.1 (70.9) compared to 542.0 (138.6) for those who did not. The difference is not statistically significant.

From the observation of the bankruptcy trustees, debtors who planned to submit a repayment plan already had knowledge about such a plan from friends or lawyers. Nevertheless, the trustee has to inform the debtor about a debt adjustment option because the last question in the financial examination is whether the debtor wishes to submit a repayment plan. The trustees mentioned that they explained to the debtor but they never know for sure whether the debtor fully understood. The trustees also commented that some debtors used the process of filing a repayment plan as a delay tactic as they needed more time to find additional sources of financing to service the outstanding debt or redeem collateral.

B. The Repayment Plan’s Length and Percentage of Repayment Compared to Total Debts

Under Thai bankruptcy law, there is no legal requirement concerning how long the debtor should take in completing repayments as well as no requirement as concerns the minimum amount the debtor has to pay. The debtor is eligible to offer a composition of debts for payment over any period of time and at any percentage of the total liabilities. Nevertheless, for the debt arrangement to be successful with the result being the debtor not having to go bankrupt, such plan must be accepted by a special resolution of the creditors’

62 \( t = -3.705, p < 0.001; \) Wilcoxon \( Z = -3.177, p < 0.01. \)
63 \( t = -2.618, p < 0.01; \) Wilcoxon \( Z = 1.074, p = 0.283. \)
64 \( t = 0.470, p = 0.640; \) Wilcoxon \( Z = 1.326, p = 0.185. \)
65 See Bankruptcy Act § 45 (2004).
66 A resolution by more than one-half in number of creditors that holds at least three-fourths the amount of debts presented at the creditors’ meeting in person or by proxy, and voting on such resolution (Bankruptcy Act § 6 (2004)).
meeting and confirmed by the court. There are no requirements in Thai bankruptcy law that the plan must distribute to unsecured claim holders not less than the amount that they would have received on such claim if the estate of the debtor were liquidated. The plan approval’s criteria totally hinges on the satisfaction of the creditor. Therefore, to increase the likelihood of the plan being accepted, the debtor should inquire into the minimum acceptable repayment rate for each creditor who has its own policy on this issue, and the rate is not publicly available. The debtor may say they have already suggested the best deal they can afford in terms of repayment percentage and duration; however, the creditors’ meeting may think otherwise. Even though in general lawyers do not know the acceptance rate of each financial institution, having them is of great help in contacting with creditors. In a case where the lawyer has dealt with the same financial institution of the debtor before, the lawyer may assist in coming up with a successful proposal. If that arrangement does not get the required votes, the debtor will be shown the bankruptcy door. The criteria for consideration by the court are different from those of the creditors’ meeting. The court has to make sure that in the repayment plan the debtor will pay all the administrative fees first before distributing his or her money to his or her creditor in addition to the proposed plan not discriminating unfairly against any creditors.67

From the database, the average length68 of the repayment plan is almost three years (34.7 months)69 and the median is twelve months. There is one case in which the debtor proposed payment over forty-eight years (around 586 months). If we treat this case as an outlier and exclude it from the computation, the average length of the debt agreement is nineteen months with the median at twelve months. Regarding the percentage of repayment

68 In cases in which the debtor did not specifically state in the plan how long they would pay, I did my own calculation by dividing the amount of the percentage of the total amount of debt with each monthly payment that the debtor offered to pay.
69 In cases in which the debtor put forward a repayment plan covering a period of less than a month. All these cases were treated as offering a zero-month plan. There were four debtors who intended to pay back within one month. Nonetheless, coding in this way slightly affected the mean and the median.
compared to the total debts that the debtor offered, the mean is 18.1 percent and the median is 10.0 percent. Longer plans did not necessarily promise the return of greater sums of money. There was simply no general pattern to make such an inference.

C. The Approval and the Confirmation of the Repayment Plan

**TABLE 7.** Results of filing a repayment plan

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>51.4%</td>
<td>did not get approval from the creditors’ meeting</td>
</tr>
<tr>
<td>8.1%</td>
<td>received both approval from the creditors’ meeting and confirmation from the court</td>
</tr>
<tr>
<td>21.6%</td>
<td>the creditors withdrew all proofs of claims</td>
</tr>
<tr>
<td>13.5%</td>
<td>pending approval from the creditors’ meeting</td>
</tr>
<tr>
<td>2.7%</td>
<td>pending confirmation from the court</td>
</tr>
</tbody>
</table>

Under Thai bankruptcy law, for the repayment plan to have any binding effect, the plan must get both approval from the creditors’ meeting and confirmation from the court. Empirical results reveal that more than half of the debtors (51.4 percent) who submitted the debt agreement did not pass the first hurdle; only 8.1 percent of cases passed both requisites. While 13.5 percent of the files were pending approval from the creditors’ meeting, 2.7 percent were pending confirmation from the court. Usually if the repayment plan gets acceptance from the creditors’ meeting, the court ratifies such agreement. Therefore, 10.8 percent of cases received both sanctions.

There is one intriguing fact about 21.6 percent of cases. After the debtors had filed a composition of debts in these cases, all their creditors withdrew the proofs of claims that had been initially filed. The legal ramification is the court has to terminate the bankruptcy process because there is no creditor for the trustee to distribute the debtor’s assets to according to section 135(2) of Thai Bankruptcy Act. The possible explanation of this phenomenon is that the debtor must come to an agreement with all of his or her creditors to make the proposed repayment outside of the bankruptcy procedure, requesting the creditors to pull out all the claims in bankruptcy cases. With the subsequent termination of
a bankruptcy case, I treat these cases as successful as those cases in which the debt arrangements received both approval from the creditors’ meeting and confirmation from the court. The debtors in these cases do not have to go bankrupt; it reaches the same end. Therefore adding the percentage of this type of outcome with the numbers of cases receiving both approvals, the success rate for submission of the repayment plan stands at about one-third (32.4 percent).

The comparison between debtors who had successful repayment plans and those who did not shows interesting facts. The successful plan filers in question have a higher mean (median) income of 34,408 (27,000) THB compared to 21,900 (10,250) THB for those whose plans were rejected. The difference is not statistically significant.70 Those debtors who received approval for their plans also had half of the median debts than those who did not (2,004,243: 4,018,737 THB).

1. Approval Criteria of the Repayment Plan by the Creditors

All interviewed creditors provided the same answer regarding the question about what they consider the acceptable criteria of the repayment plan: there were some guidelines, but no fixed rules. The creditors evaluate each repayment proposal on a case-by-case basis. The broad concept is that the acceptable percentage must be proportionate to the debtor’s capacity considering the outstanding liabilities and the plan length should not be too long. Nevertheless, they did give the factors that they take into consideration. First, they check whether they are a secured or unsecured creditor. If they are secured creditors, the amount that they receive or would receive from the sale of collateral plays a vital role. The outstanding debt less the value of the collateral is the starting consideration point. Second, they look at the total number of creditors in the case, the amount of each creditor’s claim, and the status of each creditor so that they can determine the share they could possibly

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70 $t = -0.841, p = 0.416; \text{Wilcoxon } Z = -1.546, p = 0.122.$
get. Third, with or without the collateral, each financial institution has a different policy on the minimum proportion of repayment as compared to the outstanding debt that they will accept. Put it another way, they have a dissimilar acceptable loss rate.

The type of financial institution also plays a part in adjusting the final number. The creditors who are asset management companies have lower principal costs than those of commercial banks, leasing companies, and creditor card companies. Generally speaking, they have bought defaulted loans from the sellers at substantially lower prices than their face value. Thus, asset management companies tend to be able to offer more discounts to the debtors than the original creditors. Due to the small amount of credit card debt as compared to other kinds of debt in a bankruptcy case, the credit card companies almost always accept whatever repayment rate the debtor offers as long as the majority of other creditors (in terms of the amount of debts) agree. The general acceptance repayment rate for the interviewed credit card companies is 10 percent. The credit card companies do not have much leverage in demanding a higher repayment rate. The small size of credit card debt is due to the BOT’s regulation capping the maximum credit limit at five times the clients’ earning. The credit ceiling of majority of Thai citizens is in the range of 1,660 – 3,330 USD, which is far below the threshold amount of 33,000 USD set to initiate the bankruptcy filing.

Fourth, some financial institutions said that they approve a plan only if they receive from the plan more than they would have received from the liquidation procedure. Fifth, other creditors examine whether there is another co-debtor or guarantor from whom they can collect debt under the original agreement. Sixth, in case of the asset management company, the level of profit that the company would like to make is also a factor.

71 These types of lenders sell their non-performing loans portfolios rather than try to strike the best deal with debtors because of associated cost. As long as there are defaulted loans, they have to set aside money for a bad debt reserve. Also, negotiation takes time and does not guarantee success. Selling defaulted accounts is a more certain means to restrict the loss incurred to the lenders.
Even though not all financial institutions wanted to reveal the minimum acceptance repayment rate as well as the length of plan, some suggested that the rate varies between 20-50 percent of the outstanding unsecured debt. The general acceptance time span principally ranges from six months to one year. One commercial bank, nonetheless, allows the plan to go on for as long as five years.

a. Practical Strategy in Achieving the Same End of Getting Approval and Confirmation for the Repayment Plan

The empirical results show that almost 21.6 percent of cases in which the debtor filed a repayment plan resulted in the termination of the bankruptcy case because all creditors in each case withdrew their proofs of claims that had initially filed. The possible explanation is that the debtor must come to terms with all their creditors to make the repayment outside of the bankruptcy process. This reasoning is substantiated by the information from interviews. After the financial examination with a trustee, the trustee usually suggests to the debtor that if the debtor would like to file a repayment plan, they should consult with their creditors before filing such plan. The most significant byproduct from this meeting is that many of the debtors can find a solution in servicing their debts outside of the bankruptcy process.

All creditors prefer a separate settlement of debt. The creditors solely look at their own criteria as to whether to accept the proposed plan regardless of other creditors’ consideration and approval. Also, the creditors usually get paid through this private negotiation much sooner than through distribution in a bankruptcy case. Some readers may raise the question of some of these payments being void because they violate Thai automatic stay provisions. This is true if the debtor is the one who makes the payment. Nevertheless, in practice, the debtor will designate a third party – e.g. the debtor’s spouse, parent, grown-up children, relative, or friends – to pay this debt to avoid this consequence. In some cases, it is the debtor’s money that the third party uses for the payment. Litigation to revoke these payments rarely occurs.
b. Consideration Process

The process of making the final decision whether to accept the proposed repayment plan starts with a responsible junior debt-restructuring officer. The officer examines the repayment proposal of the debtor and provides relevant comments to a senior debt-restructuring officer. At almost all financial institutions, the plan must be approved by the responsible committee which generally consists of at least three members. The number of individuals in a committee at some financial institutions is as many as nine or fourteen. Depending on the amount of debts involved, for the debt agreement to be approved or disapproved, it may have to go through the consideration of more than one committee. The average deliberation period is two to four months.

2. Confirmation by the Court

When I asked the bankruptcy judges how they exercised their discretion in confirming the repayment plan, almost every one of them answered according to the law. What the judges referred to, more specifically, is section 53 of the Bankruptcy Act. The court will confirm the repayment plan if: (1) the plan will first pay all the priority claims; and (2) the plan benefits all creditors with no preferential treatment among creditors (Bankruptcy Act § 53 (2004)). If the plan gets approval from the creditors’ meeting and the trustee reports no irregularity in notifying the creditor of the meeting, setting up the meeting, or providing adequate protection for the secured creditor, the court will almost always confirm the plan. In case there is an objection from a minority of creditors, the court will examine those petitions closely. Nevertheless, in the majority of cases, after the hearing, the court confirms the plan. Also, I asked the judges whether they considered the source of money that the debtor will use to make the payments and the debtor’s feasibility of completing the plan, to which some of them answered affirmatively. Many judges did inquire into these two issues. But when the debtor affirmed that they had an adequate source of revenue and would be able
to finish the plan as proposed, the judges could do nothing more than that. In short, the judge’s function is fairly nondiscretionary in these cases.

D. Completion of the Repayment Plan

This issue is very important in learning whether the debtor can live up to his or her promise. Also, the completion rate would allow the legislature, lawyers, and critics to test the efficiency of the current repayment plan system under the Thai bankruptcy regime. Unfortunately, only 8.6 percent (3 cases) of the total cases involved repayment plans that received both the approval of the creditors’ meeting and confirmation from the court. Two debtors had been paying according to the plan while in another case the court terminated the confirmation of the repayment plan because the debtor did not meet the obligations under the confirmed repayment plan. These few cases are not sufficient, however, to make any meaningful inference. A future research project could fill in this gap.

I asked the bankruptcy judges whether they inquired as to the causes for the debtor not being able to finish payments according to the agreement. Most judges said they did not ask; all they considered was that the debtor did not pay according to the plan and was unable to resolve the matter. If such a fact was present, they issued an order terminating the confirmation of the repayment plan and adjudicated the debtor a bankrupt.

E. The Case of Filing a Repayment Plan after Bankruptcy

Even though the frequency of submitting a repayment plan after bankruptcy is seldom, the trustee and the creditor provided the rationale behind the debtor’s decision. First and foremost, the bankrupt does not want to wait for the three years to lapse after the adjudication to get a discharge according to section 81/1 of Bankruptcy Act. The debtors who submit a payout plan after bankruptcy are generally business owners who want to continue their businesses or government aspirants who want to run for political positions or assume some appointment. Being bankrupt disqualifies individual from performing many duties.
For example, even traveling abroad is a hassle. Every time the bankrupt would like to do so, they need a permission letter from the bankruptcy judge or the trustee. Second, it is the bankrupt’s strategy to stop the sale of their assets; the disposition is on hold pending the final outcome of the creditors’ meeting. The debtors stall for more time to find more money to repay their debt or find relatives or friends to redeem their property, especially the residence. Third, in a few incidents, the debtor realized that they were bankrupt after the court had already read the judgment and wanted to shed their bankrupt status as soon as they can. Fourth, many debtors could not find enough money to make a proposal to the creditors before bankruptcy or their first attempt failed, so they tried again after bankruptcy. Perhaps they were able to find an additional source of financing. Fifth, from a moral or stigma standpoint, some of the debtors over sixty years old wanted to clear their debt before the end of their life based on the Buddhist superstition that this outstanding debt will accompany them to their next life.

III. Recommendations

The last interview question asked of all respondents whether they had any suggestions for improving the process of filing a repayment plan. All recommendations appear below with my discussion of the pros and cons of each.

A. Should a Minimum Percentage of Repayment and Plan Length Be Set?

Some creditors suggested that there should be a Ministry of Justice rule regulating the minimum percentage of repayment and plan length that the debtor must meet. In many instances, the debtor proposed to pay back less than 5 percent of the outstanding debt and over a five-year period which was mostly not accepted by creditors. Such regulation will save time and cost for the creditors in considering whether to accept the debt agreement. Nevertheless, this recommendation may fail to consider that the repayment capacity of the debtor and the circumstances surrounding each case vary, especially in terms of the amount
of debts that the debtor owes. Furthermore, it is very difficult, if not impossible, to find consensus among creditors as to what the minimum acceptable repayment rate and plan length should be.

**B. Trustees Are under Fire**

Almost all creditors had three major criticisms regarding performance of the bankruptcy trustee: the asset collection effort, the exercise of discretion in adjourning the creditors’ meeting in considering the repayment plan, and providing up-to-date information about the debtor performance under the plan. Regarding the first set of comments, the trustee should have exercised more of their collection powers according to the Bankruptcy Act. As soon as the trustee learns about the debtor’s assets, the trustee has the power to seize or attach any non-exempt assets. The trustee has the right to enter and search any premise that may have the property of the debtor within (Bankruptcy Act §§ 19, 20 (2004)). The trustee also can request an examination with any person that may have information about the debtor’s property (Bankruptcy Act § 117 (2004)). More assets mean more distribution to creditors. Concerning the second complaint, to the mind of many creditors a debtor employ the process of filing a repayment plan to delay the sale of their property. As long as the repayment plan is under consideration at the creditors’ meeting, the foreclosure sale has to be put on hold. In addition, to delay the process even longer, some debtors file an amendment to the original repayment plan right at the creditors’ meeting, proposing to pay 1 or 2 percent more. The Thai Bankruptcy Act does not specify exactly how to continue the meeting in this situation. In practice, the trustee asks the creditors whether they accept the new proposal. In every case, most creditors’ attorneys would say since this is a new amendment, they have no power to decide, and so they have to go back and confer with the creditors as regards their decision. As a result, the trustee generally postpones the creditors’ meeting. Since the steps to consider the repayment plan at different financial institutions vary, one adjournment usually
takes three months. In a case in which the debtors keep amending the plan by a 1-5 percent increase in the following meetings, this is clearly a tactic on the part of the debtor. If the trustee is not aware of the debtor’s stalling tactics or is too flexible in allowing the postponement, the consideration process could be lengthy. Moreover, the frequent rotation of trustees within the Legal Execution Department is also a factor. The new trustee needs some time to understand the situation of the particular cases and to catch up with all the strategies employed by the debtor.

The last issue concerned keeping the creditors posted about the debtors’ performance under the debt agreement. The creditors claimed that the trustee did not inform them on a monthly basis as to whether the debtor was paying their debts according to the plan as well as information on the sale of the debtor’s assets (if that was part of the plan). The creditors usually had to call the trustee to learn about these details. The mechanics of verifying a proof of claim itself is another reason behind the late distribution to creditors. The first distribution will take place after the trustee has examined all proofs of claims filed by the creditors, has recommended the payout for each claim to the court, and the court has authorized the amount to be paid. In case there are more than five creditors, it could take a long time before the creditor gets the real repayment.

C. More Transparency for the Repayment Plan

The Central Bankruptcy Court (CBC) and the Legal Execution Department (LED) should do a better job of providing information to a debtor about the availability of filing a repayment option. This task can be accomplished in a variety of ways. After the reading of a receivership order, the bankruptcy judge or court personnel should explain all possible alternatives to bankruptcy to the debtor including the repayment plan’s definition, details, process, and consequences. Alternatively, the LED can establish a front office at the CBC to supply the necessary information to the debtor under the receivership order. For debtors who
did not show up for the hearing, a brochure with the same contents of the repayment plan should be attached to the mail informing the debtor about the court’s receivership order. The alternatives to bankruptcy should not restrict to the filing of a repayment plan under the Bankruptcy Act, but should also include the out-of-court debt restructuring agreements with creditors. Also, the mediation process in a bankruptcy case has been proposed for many years, there remains no implementation as yet. In addition, what creditors are most interested in about the debtor’s understanding of the filing of a repayment plan is the treatment of collateral. The creditors want the government agencies to emphasize to the debtor that they have no right to underwater collateral.

D. Should a Soft Loan Be Available to the Debtor?

The Bankruptcy Act should allow a debtor to borrow some money from financial institutions to repay according to the plan. The current law bars the debtor from receiving any loan without first getting approval from the court, trustee, or creditors’ meeting (Bankruptcy Act § 24 (2004)). This limitation makes life for the debtor more difficult in coming up with money to propose a payout plan. Thus, this recommendation is beneficial to many cash-strapped debtors in gaining access to financing sources. Nonetheless, this suggestion would require an amendment to the current bankruptcy law, which demands time and effort from the parties involved. Also, no one can guarantee that the proposed enactment will get approval from the parliament.

If we allow this kind of transaction, there will be another sector of market that lenders can play. Whether this is a good idea is debatable. On the one hand, with certain restrictions on the approval criteria, e.g. the maximum amount of loan, interest rate, and duration of repayment, this business would provide debtors who want to borrow to file a repayment plan with reliable mainstream lending practices. On the other hand, the availability of a soft loan may lock debtors into a vicious cycle of borrowing. The debtors maybe able to pay off the
original creditor, but they are incurring new debt to the provider of the soft loan. Whether the
debtors are ultimately able to service their liabilities with the soft loan originator could be
hard to predict.

E. Location Inconvenience regarding Place for Creditors’ Meeting

The meeting of creditors takes place only in the Bangkok office of the LED. Even
though the LED has provincial offices throughout the country, such offices can facilitate the
financial examination of the debtor, but not the creditors’ meeting. So if a debtor would like
to attend the creditors’ meeting, they have to travel from their residential province to
Bangkok. Otherwise, they learn about the result of their repayment plan by mail. The
dilemma there is self-evident. If the creditors’ meeting is held upcountry, all the creditors’
attorneys would have to travel to such destinations. There are always travel costs for both
sides either way.

Another possible solution is the use of electronic methods such as having the meeting
via video conferencing or the Internet. The causes for concern here are the establishment
costs and the effectiveness of the technology. First, every government agency including the
LED is constrained by a limited budget each fiscal year. To install all the necessary
equipment for transmission would come at some expense. Therefore, the LED may prefer to
pursue other more necessary projects. Second, experience with using video conferencing at
the Central Intellectual Property and International Trade Court as well as at the CBC reveals
a further weakness of this means of communication. In many instances, signals were
intermittently interrupted or completely lost, resulting in the cancellation of hearings. I am
not exactly sure how best to solve this problem. More investment in equipment could
possibly improve the transmission. In any case, the fact remains that these costs are lower
than the costs of traveling, at least in the long run.
IV. Conclusion

The usage of a repayment plan procedure in Thailand is scant. One reason could be that the statute does not allow for voluntary filing of a plan from the beginning. When the option is available, a debtor may prefer to wait for a period of three years to lapse to get a discharge rather than try to payout some of his or her liabilities. How can the system incentivizes a debtor to file a repayment plan is a good question. Clearer and more publicly available acceptance rates from creditors may or may not help. Nonetheless, one thing needs to be borne in mind: there are debtors who do not have anything left and those who do still have some. The law should direct the latter into filing a repayment plan. Again, how to distinguish between the two groups is an even tougher question. More importantly, the lack of complete information on the completion rate of a repayment plan and final payout to creditors has to be addressed by future projects. The resulting data would reassure the creditors that a debt agreement procedure is more effective in getting their money back than the liquidation process.
CONCLUSION

Who the debtors are in the Thai bankruptcy system was the initial fundamental question that sparked this dissertation inquiry. After data collection, analyses, and interviews with interested parties in the bankruptcy process, I found that Thai bankruptcy debtors are not average Thais in terms of their income and their liabilities. They earned 23.6 percent more than average household income and owed almost thirty times more than general household debt. Two legal mechanisms partly influence these phenomena: the involuntary nature of bankruptcy case initiation and the minimum threshold amount of indebtedness. Since only those who are in a bankruptcy process get their debts discharged, only a fraction of Thai debtors, who are insolvent and exceed the debt criterion, have their liabilities forgiven. What happens to most Thai debtors who (un)fortunately have less debt than the threshold amount? Well, they have to diligently continue to service their debt while struggling to make their ends meet on a monthly, if not daily, basis. Can this group of debtors rely on government assistance? The answer is maybe. Once in a while, the government initiates a debt moratorium campaign, but the selected beneficiaries are usually farmers and fishermen, the government’s largest constituents. In turn, it could be said that the current Thai Bankruptcy Act is a source of further inequality in society from the standpoint of debt relief.

The record shows that almost all debtors in bankruptcy were heavily in debt. It would take them many years, if not a decade, to repay their debt. It is an almost hopeless situation for creditors to get back even one-tenth of the principal amount. If Thai debtors can make their own bankruptcy decisions regardless of the minimum amount, debtors may decide to file earlier and have a lower amount of debt at the time of the filing. However, whether this introduction results in a greater rate of return to creditors is anybody’s guess.

The figures from this project revealed that most male and female debtors who found themselves in bankruptcy were at the end of their working lives. The majority of them were
in their fifties, with small income, without occupation, and with no property ownership. The bankruptcy discharge received after three years only helps debtors to forget the negative amount in their accounts, but does not brighten their future prospects. Debt release certainly does not guarantee a better quality of life.

What drives Thai debtors to bankruptcy is the second core research question. The data show the overwhelming cause is default on a loan agreement, and not living beyond one’s means as portrayed in much of the media. This is a legitimate cause for at least two reasons. First, aspiration to own a home which improves the quality of life of the debtor and the debtor’s family members is a commendable goal. Saving up until having the required amount does less good to the current market-based economy. In any developing country, more consumption is needed to increase economic growth. The credit system is available to assist consumers in need and to achieve this aim. Second, both the Bank of Thailand and financial institutions have strict guidelines in approving a loan application; indeed, not all applicants get approval. Even among approved clients, there are variations in terms of the allowed amount, interest rate, and repayment length. No financial institutions want to see their debtors default and, more importantly, want to set aside money for non-performing loans. Thus, with these rigid criteria from the banks in place, when default occurs, fingers should be pointed at both debtor and creditor. What more can we do to prevent default on a lending agreement is the most difficult question to answer. Causes may include loss of job, accident, or illness; all of them at times unforeseeable. Alternatively, default may arise from other uncontrollable economic forces. Above all, implementation costs to reduce the default rate to zero are not optimal; the marginal cost may exceed the marginal benefit.

From the creditors’ perspective, they need to limit their loss rate as much as possible. In the case of defaults, they would do anything to make the customers’ accounts current. As soon as a debtor defaults, they want to strike a deal with a debtor as early as possible.
Nonetheless, the Bankruptcy Act does not help the creditor much in this aspect. No voluntary repayment plan is available to an individual debtor. If a debtor cannot make an agreement before the start of the bankruptcy case, the present repayment plan process is tricky and lengthy. On the one hand, the system is open for a debtor to file a payout plan without any restrictions. The debtor can propose repayment at any rate without a minimum or maximum repayment length. On the other hand, this flexibility allows strategic debtors to delay their cases, resulting in late payment to creditors. Furthermore, no existing mechanism of the payout plan procedure helps steer the can-pay debtor to file a plan. Adding voluntary debt arrangement and a more streamlined process may make filing a plan more appealing to both creditors and debtors alike.

In practice, creditors use the current system as the last attempt to collect their debt. Nevertheless, the truth is that the procedure works more as a process to double check the validity and amount of debt with slim prospects of recovery for creditors. In almost all cases, the outstanding debts were valid and most debtors did not show up. Those who appeared in front of bankruptcy judges mainly asked for more time to renegotiate with their creditors. These tasks could be done administratively without court involvement. Having a full-blown court hearing prolongs the case and lengthens the sale of the debtor’s property. Thus, creditors get late distribution. In fact, the Legal Execution Department may be able to handle bankruptcy cases more efficiently than the Central Bankruptcy Court.

This dissertation has raised many important issues for future research endeavors. First, we do not yet fully know the causes why a debtor defaults on the loan agreement. This insight will help pinpoint what maybe the root cause of the insolvency problem. An additional questionnaire as well as interviews with debtors would fill this gap. Second, the large number of debtors who miss the financial examination with the trustee is still a mystery. How the system can increase the participation of the debtor is a good question.
Possibly debtor education on the bankruptcy process should be made available to debtors at the time of loan approval and heavily emphasized to any judgment debtor in a civil case. Nevertheless, even if implemented, we cannot do anything with debtors who know their duties but decide to ignore a meeting with the trustee. Current civil sanctions on this issue by extending the discharge period from three years to five years may not be able to deter this group of debtors. Criminal sanctions, on the other hand, require a lot of time and effort from the interested parties— in reality such availability is rare. Third, issues on urban and rural debtors are worth further exploring. This research fleshes out differences among debtors who live in Bangkok and other provinces. The information may suggest different credit accessibility due to income or attitude toward borrowing. Fourth, bankruptcy effects on family members of debtors have just been started in a broad sense. Overindebtedness may increase tension between married couples or partners. The children of the bankrupt may suffer in terms of education or development than children in a bankruptcy-free household due to financial constraints. Again, questionnaires and interviews can help extract this information. Fifth, the two most important aspects of information about filing a repayment plan – the completion rate and the final creditor’s payout rate – have not yet been fully addressed. Future longitudinal research will allow policymakers to better evaluate the effectiveness of the current payout plan system.

To my mind, the Thai bankruptcy procedure has been designed as an administrative process to orderly collect, sell the debtor’s assets, and distribute proceeds to creditors. The fact that most debtors have no assets is not the fault of the system. I strongly believe that most debtors who find themselves in bankruptcy have in all actuality nothing left. Crafty or deceitful debtors represent a small fraction of total debtors. Also, the current repayment plan does not incentivize debtors to file. To avoid bankruptcy judgment, an out-of-court debt agreement is a more plausible action. Needless to say, the present process already releases
the debtors from almost all of their liabilities within three years. Some critics may argue that this period is too long in barring debtors from doing any transactions with their assets; it is not good for the economy. The original thinking seventy years ago when the first Thai Bankruptcy Act was enacted was that any bankrupt is a person without responsibility and not suitable for a government-related position, and this thinking still persists today. Moreover, almost everyone believes that fraud and abuse of bankruptcy law must be prevented, if not eradicated. Thus, the three-year discharge period is deemed a punishment for debtors regardless of the true cause of insolvency. This sanction may seem economically unsound from the developed countries’ point of view to curb misuses of the bankruptcy system at any cost. However, in an emerging market country like Thailand, forgiving debt quickly without any restrictions is against social norm that you have to pay what you owe. To change social attitudes on any issue – bankruptcy matters being no exception – would certainly take time. I hope very much that this dissertation has provided the groundwork for future exploration of the Thai bankruptcy process to ultimately make the Thai bankruptcy system work better for all parties involved.
REFERENCES

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APPENDIX

I. Financial Examination Report

Name…
Date of birth… Age…years old
Occupation…. Or does not work
Address…

1. Occupation and Income
   1.1 Occupation before the filing of bankruptcy complaint by the creditor…salary…
   1.2 Current occupation…salary….
   1.3 Income given by brother/sister, relative, or friend on a monthly basis….

2. Marital status and Properties
   2.1 Single…Married…Divorced…Widowed…Live with permanent partner
   2.2 Number of children…
   2.3 Are you financially responsible for your children?…Yes…No
   2.4 Details of marital properties including any security interest upon them…

3. Current living situation
   …Live with someone without paying rent
   …Rent
   …Own your home or are making mortgage payments

4. Shares in company or partnership
   No
   Yes, please specify details…

5. Right to receive payment from the third party
   No
   Yes, please specify details…

6. Life insurance
   No
   Yes, please specify details…

7. Details of bank account
   No
   Yes, please specify the name of the bank and the amount deposited

8. Causes that the creditor files a bankruptcy complaint against the debtor
   8.1 Default on lending agreement
   8.2 Other reasons, please specify details…

9. Details of other creditors
   No
   Yes, please specify details…

10. Properties of others in the debtor’s possession
    No
    Yes, please specify details…

11. Details of security interest on the debtor’s property
    No
    Yes, please specify details…

12. Property transferred to the third party
    12.1 Property transferred within ten years prior to and after the initiation of bankruptcy case
    No
    Yes, please specify details…
12.2 Property transferred within three months prior to and after the initiation of bankruptcy case
   No
   Yes, please specify details…

13. Property transferred abroad
   No
   Yes, please specify details…

14. Details of any civil lawsuit that the debtor is a defendant
   …Never been sued in the civil case
   …Cannot remember whether the debtor had been sued or not
   …Yes, please specify details…

15. General characteristics and behavior
   …The debtor is not addicted to gambling or does not spend his money recklessly
   …The debtor is addicted to gambling or spends his money recklessly. Please give the reasons…

16. Submission of the repayment plan
   …The debtor has already submitted the repayment plan to the trustee
   …The debtor has no intention to submit the repayment plan

II. The Debtor’s Lists and Schedules
1. A list of unsecured creditors (Name, Occupation, Address, Type of debt, Incurred date, Amount of debt)
2. A list of secured creditors (Name, Occupation, Address, Type of debt, Incurred date, Amount of debt, Details of collateral, Value of the collateral, Equity (if any))
3. A list of tax creditors (Name, Occupation, Address, Type of debt, Incurred date, Amount of debt)
4. A list of foreseeable creditor or other debts (Name, Occupation, Address, Type of debt, Incurred date, Amount of debt)
5. A schedule of assets
   5.1 Money deposited in the bank (Amount in THB)
   5.2 Cash (Amount in THB)
   5.3 Money given to a lawyer for this bankruptcy lawsuit (Amount in THB)
   5.4 Merchandise in store (Amount in THB)
   5.5 Furniture (Amount in THB)
   5.6 Jewelry (Amount in THB)
   5.7 Land and Home (Amount in THB)
   5.8 Life and property insurance (Amount in THB)
   5.9 Other properties (Amount in THB)
6. A schedule of debtors of the debtor in the bankruptcy case (Name of the debtor, Occupation, Address, Type of Debt, Incurred Date, Amount of Debtor: possible amount that will get repaid, possible amount that will not get repaid, doubtful amount that will get repaid, interest rate, amount of arrear interest)
7. Explanation sheet for the debtor who has a business enterprise (sources of start-up money, summary of the business performance from the start until the initiation of the bankruptcy case, details of properties, cause of being sued in bankruptcy case)