



THE PROPOSAL OF VOLUNTARY BANKRUPTCY FOR
INDIVIDUAL DEBTOR IN THAILAND

BY
MR. TANAIKAT KULBUPAR

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENT FOR
THE DEGREE OF MASTER OF LAWS
(BUSINESS LAW)

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

DECEMBER 2008

**THE PROPOSAL OF VOLUNTARY BANKRUPTCY FOR
INDIVIDUAL DEBTOR IN THAILAND**

BY

MR. TANAI RAT KULBUPAR

**AN INDEPENDENT STUDY SUMMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENT FOR
THE DEGREE OF MASTER OF LAWS
(BUSINESS LAW)**

**GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY**

DECEMBER 2008

**THE PROPOSAL OF VOLUNTARY BANKRUPTCY FOR
INDIVIDUAL DEBTOR IN THAILAND**

**BY
MR. TANAI RAT KULBUPAR**


**AN INDEPENDENT STUDY SUMMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENT FOR
THE DEGREE OF MASTER OF LAWS
(BUSINESS LAW)**

**GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY**

DECEMBER 2008


Independent Study Title : The Proposal of Voluntary Bankruptcy for
Individual Debtor in Thailand
Author : Mr. Tanairat Kulbupar
Major : Master of Laws (Business Law)
Advisor : Assoc.Prof. Nattapong Posakabutra

Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.


..... Director of the Graduate School of Law
(Assoc.Prof. Nattapong Posakabutra)

Committee:


..... Chairman
(Prof. Phijaisakdi Horayangkura)


..... Committee
(Mr. Wutipong Vechayanon)


..... Advisor and Committee
(Assoc.Prof. Nattapong Posakabutra)

Independent Study Title : The Proposal of Voluntary Bankruptcy for
Individual Debtor in Thailand
Author : Mr. Tanairat Kulbupar
Degree : Master of Laws (Business Law)
Academic : 2008
Advisor : Assoc. Prof. Nattapong Posakabutra

ABSTRACT

This research studies the history and concept of bankruptcy law in foreign countries and analyses the problems of the bankruptcy law in Thailand, what would be the implication to apply the law concerning the proposal of voluntary bankruptcy for individual debtor in Thailand in order to find out an appropriate provision of voluntary bankruptcy for individual debtor in Thailand.

Bankruptcy is the status of a debtor who has been declared by judicial process to be insolvent or unable to pay his debts as they fall due out his assets. The law benefits and facilitates both the creditors and the debtors and also third parties involved. Moreover, Enforcement under this bankruptcy system is particularly faster than that under the former proceeding. Hence, the bankruptcy law is regarded as the most effective measure to maintain benefits for not only creditor and debtor but also for the society as a whole.

It is found that, under the Thai Bankruptcy Act B.E.2483, the law allows only a juristic person to file a voluntary bankruptcy petition to the court according to section 88 of the Act. Although, the law provides the alternative measures such as business rehabilitation and voluntary arrangements but these measures are not possible for all individual insolvent debtors. In other words, the law provides an exit for the individual insolvent debtor to get benefit from fresh start but does not give debtor an entrance since the individual insolvent debtor is banned from filing to the court such a voluntary bankruptcy petition. As a result, they are left with no chance to be benefited and facilitated from this procedure.

It is recommended that, the law should allow the individual insolvent debtor to file a voluntary bankruptcy petition. Therefore, this topic must be studied carefully and consideration must be taken, in order to enact the most effective measure for this critical issue.



ACKNOWLEDGEMENT

I would like to express my sincere appreciation, pleasure and admiration to those people whose support, advice, recommend, encouragement and assistance have contributed to successfully completion of this independent study research paper.

First, I would like to express my grateful thank to Assoc. Prof. Nattapong Posakabutra the director of LL.M. program and my advisor, who shared his valuable time provided guidance, suggestions, recommendation and gave a strong support to read and correct my paper. I would like to give a special thank to the other committee members, Prof. Phijaisakdi Horayangkura and Mr. Wuttipong Vechayanon whose share his wealth knowledge and recommendation to improve my research paper and spending the times to read and approve this independence paper research to be useful for everyone.

Additionally, I would like to give the special thank to Dean Assoc. Prof. Pornchai Soonthornpan. He gave his mind and guidance for every student in his eyes. I would like to give him the sincerely thank from the faculty student.

I am also grateful to all of my friends for cheering, supporting, encouraging me to complete my paper. We all had a good chances and times to learning and living together in excellent study program of Assumption University. We are so proud to complete Master degree from here, Assumption University, and thank you to all faculty members.

Finally, I would like to thank my dearly loved family, who gave me a chance to live and study including hard working for me. They are always by my side in good and bad times and never ever told me not to try in studying. I would like to thank them from my heart for their love, understanding, support, assistance, and encouragement in doing this paper and studying Master degree

Tanairat Kulbupar

Table of Content

	Pages
Abstract	iii
Acknowledgement	v
 Chapter 1 Introduction	
A. Background and General Statement of the Problem	1
B. Hypothesis of Study	3
C. Objectives of the Study	4
D. Scope of the Study	4
E. Study Methodology	4
F. Expectation of the Study	5
 Chapter 2 The Objective and Development of Bankruptcy Law	
A. The History and Concept of Bankruptcy Law in Roman Era	6
1. The History and Concept of Bankruptcy Law in The United Kingdom	8
2. The History and Concept of Bankruptcy Law in The United State of America	10
3. The History and Concept of Bankruptcy Law in Thailand	12
B. The Concept of Bankruptcy Law	15
C. The Benefit of Bankruptcy Law	17
D. The Bankruptcy Law in Thailand	19
E. The Idea for Giving Debtors Proposes a Petition for Voluntary Bankruptcy for Individual Debtors	23

Pages

F. The Main Principle for Giving Debtors Proposes a Petition for Voluntary Bankruptcy for Individual Debtors.....	26
G. Discussion of Advantages and Disadvantages of the Voluntary Bankruptcy for Individual Debtors.....	29

**Chapter 3 Voluntary Bankruptcy for Individual Debtors
in Other Countries**

A. UNCITRAL Legislative Guide Model Law on Insolvency Law.....	32
B. The Law of Voluntary Bankruptcy for Individual Debtors in Other Countries.....	34
1. The Law of Voluntary Bankruptcy for Individual Debtors in the United Kingdom.....	34
2. The Law of Voluntary Bankruptcy for Individual Debtors in the United State of America.....	37
C. The Number of Issues for Consideration.....	41

Chapter 4 Analysis of the Problem

A. Problem of Applying Voluntary Bankruptcy for Individual Debtor in Thailand.....	49
B. Problem about the Application of Voluntary Bankruptcy for Individual Debtor in Thailand.....	52

Chapter 5 Conclusion and Recommendation

A. Conclusion.....	54
B. Recommendation.....	58

Bibliography.....	60
--------------------------	-----------

Chapter 1

Introduction

A. Background and General Statement of the Problem

Nowadays, people regularly do business to each other. Generally, there will be a successful business and unsuccessful business at the same time. The unsuccessful business transaction can cause debt. In some case, the mistake can cause a huge debt obligation, which is beyond the ability of the businessman ability to pay. This causes many problems to our society; therefore; the legal process is needs to create a mechanism which do justice to all parties. For this reason, Bankruptcy law is an important measure for people who are in a state not able to meet the incurred financial obligation. If there is no Bankruptcy law, creditors may not be paid justify, and the debtor may not be able to start a new life. The purpose of bankruptcy law is to collect the assets of debtor and allocate them to their creditors equally.¹

Bankruptcy is the status of a debtor who has been declared by judicial process to be insolvent or unable to pay his debts as they fall due out his assets². The purpose of such settlement is to proportionally distribute the bankrupt's assets among the creditors, and, to relieve the debtor from further liability. Beneficially, the bankruptcy policy aims to give creditors a fair share of the money that one can afford to pay back, and by contrast, to give the honest debtor, a fresh start by discharging his/her debts³.

"Bankruptcy is a legally declared inability or impairment of ability of an individual or organizations to pay their creditors". Therefore, Bankruptcy law provides for the development of a plan that allows a debtor, who is unable to pay his creditors, to resolve his debts through the division of his assets among his creditors.

¹Bankruptcy Act B.E.2483, Section 115.

²Steven A Frieze, Handbook of Bankruptcy and Personal Insolvency, (London : FT Law & Tax) 1(6th ed. 1996).

³Know some Benefits of Bankruptcy, available at <http://www.buzzle.com/editorials/10-15-2005-78969.asp>. (last visited June 2, 2008).

This supervised division also allows the interests of all creditors to be treated with some measure of equality. Certain bankruptcy proceedings allow a debtor to stay in business and use revenue generated to resolve his or her debts⁴.

An additional purpose of bankruptcy law is to allow certain debtors to free themselves (to be discharged) of the financial obligations they have accumulated, after their assets are distributed, even if their debts have not been paid in full. In some case, creditors may file a bankruptcy petition against a debtor (involuntary Bankruptcy) in an effort to recoup a portion of what they are owed. However, in the majority of cases, however, bankruptcy is initiated by the debtor (a Voluntary Bankruptcy) that is filed by the bankrupt individual or organization.⁵

Over the past two years, there has been debate as to whether Thailand should adopt a scheme of Voluntary Bankruptcy for individual debtors. Voluntary Bankruptcy means when any individual who is insolvent and indebted to a set amount of money files a petition for bankruptcy. If he or she is an honest debtor and cooperates with the creditors and government officials in collecting all available assets for repayment of his or her debts, after a designated time, he or she will be discharged from bankruptcy without any debts. The reasons behind this argument stem from the present Bankruptcy Law in Thailand. According to Thai Bankruptcy Act B.E. 2483 (A.D.1 940), any debtor who is faced with financial difficulties cannot file a petition for bankruptcy. Instead, he or she has to wait for a creditor or creditors to file a bankruptcy petition against him or her. There is merely a compulsory bankruptcy system in Thailand.

Moreover, individual debtors who do not have their creditors file a bankruptcy charge against them cannot take advantage of section 81 / 1 of the Act. This stipulates that a natural person adjudged a bankrupt by the court shall be discharged from bankruptcy immediately upon the lapse of three years from the date the court adjudged him or her bankrupt. In addition, proceedings for reorganizing the business of a debtor under Chapter 3/1 apply only to the debtor who is a limited company, a

⁴Bankruptcy: an overview, available at <http://topics.law.cornell.edu/wex/Bankruptcy>. (last visited June 02, 2008).

⁵Ibid.

public limited company or other juristic persons as provided in the ministerial regulations. The individual debtor cannot utilize the provisions in Chapter 3/ 1. Therefore, Thai individual debtors do not have the chance to begin a 'fresh start' voluntarily. When a debtor is placed under the receivership order, all of his or her assets save necessary items will be seized and he or she cannot perform any juristic acts. If the debtor is a government official when the court declares him or her a bankrupt, then that individual has to quit his or her job. Many people view these provisions as a hindrance to the economic and social development of Thailand.⁶

The contents of this paper are divided into four parts. First, the writer will elaborate the details, history, development and concept of the voluntary bankruptcy for individual debtors in Thailand and other countries to help the readers comprehend the ongoing procedure. Then, the procedures of laws relevant on voluntary bankruptcy for individual debtors of the United States of America, the United Kingdom will be studied to understand their procedures and to see what can be learnt from their experiences. Finally, after analysis of problems, a voluntary bankruptcy for individual debtors in Thailand as an amendment to the current Bankruptcy Act will be suggested.

B. Hypothesis of Study

The Problem behind the present bankruptcy act stem from the creditor themselves that took advantage from debtor by using the benefit of time bar to let the debt interest continuing increase by using the benefit of the extension of this prescription. In addition, some creditors may try to negotiate with debtor secretly to repay their debt which can take advantage from other creditors⁷. Therefore, the provision of voluntary bankruptcy for individual debtor should be added to Thai bankruptcy law for the most benefit to both debtor and creditor.

⁶Kanok Jullamon, The proposal of Voluntary Bankruptcy for individual debtors in Thailand, (Dulapata Law Journal January-August) 126 (1998).

⁷Ibid.

C. Objectives of the Study

1. To study the meaning of voluntary bankruptcy for individual debtor and how to apply the system of voluntary bankruptcy for individual debtors in Thailand.
2. To study the advantages and disadvantages of having the voluntary bankruptcy for individual debtor provision in Thailand.
3. To find a solution for the problems that exists in the bankruptcy law.
4. To study problems, laws, rules and regulations that other countries use to handle the Voluntary Bankruptcy.
5. To find the laws that should be amended for the new provisions in Thailand.

D. Study Methodology

This research paper uses documentary research in the research methodology and compiles the documents in both Thai and English languages in the text books, journals, articles, thesis, and researches.

E. Scope of Study

This research paper has the scope concerning with the history, development and ideas of the voluntary bankruptcy for individual debtors in Thailand and other countries. This research introduces the problems of bankruptcy law in Thailand with is inconsistent with cross-border insolvency. Moreover, this research presents the United States of America and United Kingdom Law which are related to voluntary bankruptcy for individual debtors system. Since, Thailand does not have the provision of voluntary bankruptcy for individual debtors, so the researcher would like to concentrate on this problem by studying the advantages of having the system of voluntary bankruptcy for individual debtors with the foreign countries laws.

F. Expectation on the Study

1. To know the meaning of voluntary bankruptcy for individual debtor and how to apply this provision to the problem.
2. To identify the advantages and disadvantages of having the voluntary bankruptcy for individual debtors to Thailand.
3. To know the history, development and ideas of the voluntary bankruptcy for individual debtors in other countries.
4. To know how to implement the system of voluntary bankruptcy for individual debtor in Thailand.
5. To know a solution to the problems that exists in the bankruptcy law.



Chapter 2

Development of Bankruptcy Law

A. The History and Concept of Bankruptcy Law in Roman Era

Rome was established in 753 years BC and had continued their evolution in politics, government and law. Besides, it had expanded the areas to cover all Europe, West Asia and North Africa. There are so many countries being colonial from the expansion of the politic influences, therefore, from the expansion of Rome to the colonial countries, it will impact to the culture, languages, politics, rule and law to other countries under their ruled. Especially, in Europe which received most impact and still continue influence until today, it can be said that the bankruptcy law is originated from the Roman law.⁸

In the first period of Roman society, it was not so complex. The communication in the community is only the exchange of goods or it can be said that the buying and selling system are only the exchange of one for one. Therefore, in the first period of Roman society there is no law of bankruptcy as there is no need to. After that when the economic situation had developed and expanded wider, and then it was the law of contract arisen. There happen the miss paid of debt in the business society, the debtor then have to responsible for the miss of contract and miss paid off the debt by their bodies and life for example, the debtor have to be the slave to pay for debt, be jailed or be chased out of the country. However, in the Rome country side, there was a law of assurance in case that the debtor come before debt by the person agree to guarantee, after the debtor miss paid the debt people who guarantee will be force to be the property of the creditor. Thus, the guarantee of debt by outside people may unable to use in practical because no one agree to guarantee for other. Therefore, when

⁸Pichai Ninthongkum, How to sue Bankruptcy (Bangkok: Athataya Millennium Publishing) 25(1991).

nobody guarantee for the debt, the debtor has to responsible for it by their body and life.

When the economics and society developed, there are more buy and sell in the society. It was the case that the debtor forces to pay the debt and if there is a miss paid, they will take to be a slave or execution or torture which result in the confusing in the society. This was the cause to establish the bankruptcy law to apply with the miss paid of the debt of the debtor. In the 4th century (326 B.E.), Roman launched the law called Lex Poetilia Papiria de Nexia by this law use to stop the force to pay for the debt by bodies and life of the debtor. It removed the view that bodies and life are the property that can be used instead of debt. On the other hand, it was a law that lay out the criteria to force paying debt which it should focus on the property of the debtor not the debtor themselves by forcing them to pay the debt by other properties of them. If the debtor cannot pay, the creditor has the right to ask for the withdrawal of the debtor property management by the debtor will not able to manage their own property ever and give the power the creditor instead. However, they still have the method of jailing the debtor but for the mentioned bankruptcy law we can see that it focus to the property selling of the debtor (Venditio Bonorum). The mentioned debtor, though they are the person who has a lot of debt or not, they will be forced too. It can be seen that the bankruptcy law has a concept of forcing to get the debt payment return to the creditor which can say that it has only the idea to preserve the creditor.

When the business grows better, there is a competition in commercial and the development of their own goods result to the loss and miss paid of debt as the change in market situation which come from external factors and under the honest of the debtor. Not pay for their own debt may happen by coincident, in an era of Classic Roman there was a provision of “cession bonorum” that the innocence debtor can prove themselves that they don’t pay the debt by force majeure. Then the judge will permit the committee to relent under the request of debtor.⁹ The judge will state the condition to sell all the properties of the debtor as giving them a chance before selling their assets which some of the debtor can slow the selling process to take time finding

⁹Wicha Mahakhun, The commentary on Bankruptcy Law (perfect edition) (Bangkok:Nitibunakarn Publishing) 11(8th ed. 2001).

more money to pay the debt. This aim emphasized the power of creditor to ask the force of debt payment from the debtor who is a Merchant only. After classical era, the provision of these was replaced by the provision of debt dilation.

After the Classic age, the suing method of the debtors was divided (1) insolvent debtor (2) unordinary insolvent debtor, from each other. For the suing of unordinary insolvent debtor will use Individual Remedies. As when the creditor submits the request, the staff will seize the assets of the debtor only as necessary according to the creditor request. If the debtor still not pays the debt within 2 months, the seized assets will bring out to sell and the money from selling will use to pay the debt for the creditor. The left money will return to the debtor. For the assets that brought to sell, if no one buy them the creditor can take them. These methods can also use to sue the debtor that has insolvent debt, if that debtor has more than one creditor then, the creditor must sue them to bankrupt. For people who have insolvent debt (Distractio Bonorum), they will seize of all debtor's assets to sell in the market. Beside there was a provision of compromise the debt (remission). By reducing the amount of debt from the majority of creditor to avoid the debtor from being bankrupt and the provision of debt (dilation) by stay under the condition such as the guarantee of debtor honestly.

Thus, the idea of bankruptcy law in the beginning age aimed to gathering most of the debtors' asset to pay all to the creditor and if which of the debtor was seized all the assets to pay for the debt, the debtor will has no assets left. Eventhough, the asset that is the tool to do job until all the debt was paid. These debtors are like the people who died from the commercial economic system as they cannot do such a work then, it like they dead in the civil aspect.

1. The History and Concept of Bankruptcy Law in The United Kingdom

In A.D.1542, the new act "The act against such persons as do make bankrupt" was introduced in England.¹⁰ This regulation could be still used only against merchant and it was only used on involuntary basis. In A.D.1705, there was a

¹⁰The History of Bankruptcy, available at <http://www.attorneybankruptcyhistory.cfm/>.
(last visited July 10, 2008).

new regulation in discharge system under the idea of forgiveness principle. With the condition that debtor would get a return of 5% of the total value of his/her asset. The reason is to compensate debtors for co-operate in revealing their assets. This provision of law made debtor to take part in the problem and give benefits to both creditor and debtor. However, prosecuting at this time, allowed only creditors to file a bankruptcy case to debtor (Involuntary insolvency).

As the topography of England is the island, the characteristics of the commercial of the merchants, financial banker that conducted most business are English nationality. It is not a big society by the group of the merchants and people in business society that have closely relationship, some done business in the family which are the buy and sell in the community only. Therefore, the first era of England in A.D.1705, there was not much problem in transfer the problem of debt as it was a group business. And in that age, the debtor will be punished by bodies and life for example, jailed executions which will loss the human resources.¹¹ Therefore, it was the enforcement of the government of England to find other measure to replace the punishment on the life and bodies. For not to lose the human resources as well as finding more measurement to be most benefit to the economic system of the country which England has established the bankruptcy law on the release of bankrupt debt (Discharge). By having the condition to motivate the debtor by return those 5% of the property value that gathered to pay for debt as a return of their cooperating to reveal their property information. On the other hand, if the debtors not cooperate in the way, they may receive the penalty on their life and body or even an execution. The corrupted debtors who intend to hide their assets from the creditor to ask for the debt payment, those debtors may receive a criminal case penalty as a corrupted bankrupt person or the fraudulent bankruptcy as well. Thus, bankruptcy law of England in this age though that the fault of the corrupted bankrupt is the violent criminal fault or felon and also stated some exceptions of some category of debt that will not be released or Exemption such as debt that arise from the debt compromising, married

¹¹The History of Pre-Medieval Bankruptcy, available at <http://cominganarchy.com/2008/05/11/the-history-of-pre-medieval-bankruptcy/>. (last visited July 10, 2008).

and child raising money. And the sue case in this age will permit only for the creditor that has right to sue the debtor for the bankrupt case. (Involuntary Insolvency)

In A.D.1844, the system of voluntary insolvency was firstly introduced in England but still only for debtor who was merchants. Later in A.D.1861, there was a big change in condition from merchant only to all people. Then, the insolvency law in UK was developed continually to make debtor participate in procedure to show their honesty by revealing information and collecting their assets to pay the debt to all creditors as much as possible and as soon as possible.

In A.D.1914 England has enacted new provisions of law “The Bankruptcy Act 1914” and “Deeds of Arrangement Act 1914” which gave an alternative ways for debtors to avoid bankruptcy. This was an allowance to give right to debtor which was an alternative way for debtor to choose the way of life. Moreover, it gave debtor a chance to negotiate the amount of debt before becoming bankrupt.

There was a policy in England to help debtors’ especially individual debtors using the principle of “Individual Voluntary Arrangement”. This policy gave debtors a chance to allocate his/her debt by him/herself and this was a measure of law that the debtor could request from the court. In this case the judge had to issue the official order for debtor to proceed. Until A.D.1986 the laws about liquidation and personal insolvency were combined in to “The Insolvency Act 1986” and there were still a provisions allowing voluntary bankruptcy.

2. The History and Concept of Bankruptcy Law in The United States of America

It is because the country of United States of America was formed of different races of people, so at the early time the state of economic and society expanded so quickly, it was necessary to enact bankruptcy law. At the beginning, the bankruptcy law of The United States of America was based on the example of insolvency law of England¹². In A.D.1800, the Congress party under the provision of constitution issued the first bankruptcy law. At that time, the country faced financial

¹²A brief history of bankruptcy, available at <http://www.bankruptcydata.com/ch11history.htm/>.
(last visited July 10, 2008).

75396 e.2

crisis because people try to make high profit on immovable property. As same as England law, this law firstly applied to merchant only, on those who was involved in trading and allow only creditors to have the right to file the bankruptcy case. According to the United States of America's bankruptcy law in A.D.1800, debtor would be discharged by the resolution of creditors which come from the theory of forgiveness for debtors.

In A.D.1841, the congress, US Central government was established the new bankruptcy law to use as a second one as the economic crisis in A.D.1837¹³. This law came up to help debtor by no limit to only the merchant or the commercial that can go through the process of bankrupt and it can use the benefit to begin the new life "Fresh Start". Moreover, the provision allowed the debtor to submit the request as their will to get in the bankrupt process for the benefit of debt release (Voluntary Bankruptcy) or Consumer Bankruptcy. But, this is under the condition that it should be the vote of agreeing from creditor committee more than a half. However, this law applied only for 18 months and it was cancelled in A.D.1843. However, it point out that there is a given of the right to the debtor to ask for being bankrupt by themselves which was another step of the idea development in the bankruptcy law.

The third bankruptcy law was established and applies to use in A.D.1867 result from the change in the economic and society which impact from the Civil War. By this law permit the forward of request for bankrupt both by the debtor's willing and the asking of creditor and it was no limit to the merchant debtor and the businessman only that can go through the bankrupt process. Beside, the law also uses the example of the England bankruptcy law. In the provision of the ending of the bankrupt process by compromising the debt, these are mostly under the agreement of the creditor. Thus, from the creditor that has the right to request 3 to 4 quarter of all debt of debtor. These laws were added and re-write in A.D.1874 and finally it was cancel.

The bankruptcy law of The United States of America was amended according to the situation of that period of time. It was amended twice in A.D.1898

¹³Wicha Mahakhun, The commentary on Bankruptcy Law (perfect edition), p.11.

and A.D.1934 and still permitted personal debtors to petition bankruptcy for him/herself under the agreement of all creditors. Later in A.D.1970, many businesses collapsed, therefore bankruptcy law and composition of debt were in need. The new bankruptcy law (Bankruptcy Act 1978) which was effective on the 1st October 1978 allowed debtors to discharge from bankruptcy automatically if debtors did not petition for bankruptcy dishonestly. However, this action was under the condition of checking dishonest of trustee and creditors, who could check and object the dishonest debtors.

The United States of America uses the concept of capitalism in their politics and economics which has the policy to encourage more consumption to develop economics and society. Therefore in A.D.2004, there were an increasing number of petitions for voluntary bankruptcy in The United States of America, Especially the petition of bankruptcy under chapter7 of individual person which major of debts causes from consumer debts.

Next on April 20, 2005, the American Parliament has signed to re-content the old bankruptcy law year 1978 which was used more than 25 years. The bankruptcy law that was amended and used on October 17, 2005, thus it was re-contented to add the measure to control more about voluntary bankruptcy. Plus, it was use to filtering the real honest and suitable debtors to ask for themselves to free and discharged from bankruptcy process. In United States of America, the process of bankruptcy is choices of debtors where debtors are considered as a consumer who can choose his/her own life which will be explained as follow.

3. The History and Concept of Bankruptcy Law in Thailand

In the early Rattanakosin period, international and domestic trade was expanded. The number of merchants and businessmen increased greatly. Therefore, the enforcement of the provision of loaning law was a provision that had a bad effect to the trade of the country. Thus, to support commerce and justice, RamaVI in Rattanakosin period B.B.2434 cancelled the law of loan and provided the new bankruptcy law, correcting and adding named Loan Act B.E.2434 which allowed insolvent debtor who were individual persons have the right to petition the court to

designate office to searching and gathering asset to repay debt¹⁴. It is opened a chance for debtor to petition bankruptcy voluntary according to international bankruptcy law.

When the court judges debtors to become bankrupt according to this law did not mean that debtors was discharged from all of this debt because later on when debtors increased the amount of his assets he/she had to pay the rest of his/her debt to the creditor. Therefore, giving the right to debtors was not practical because it was still a measure to protect a creditor to receive full debt payment without concerning debtors. This law allowed only a debtor to petition for bankruptcy by him/herself, but creditor had no right to sue debtor for bankruptcy. This provision of law created many problems in debt payment system and credit system in Siam. Nevertheless, this law was in use for only 17 years and in B.E.2457 Rama VI had reformed the bankruptcy law by cancelling bankruptcy law chapter B.E.2434 and enacted provision of bankruptcy act B.E.2451 instead and cancelled the right for debtor to petition him/herself bankrupt¹⁵. For another reason, the provision of bankruptcy law B.E.2451 was amended from the original bankruptcy law of Siam which followed the insolvent law. In that period, England did not allow debtors who were individual person to petition from voluntary bankruptcy. (B.E.2451 was the year A.D.1908 when England allowed individual person debtors to petition for bankruptcy in A.D.1986)

After the year B.E.2451, the bankruptcy law was amended several times until B.E.2483 the Bankruptcy Act B.E.2483 was enacted to enforce and allow only juristic persons to petition for liquidation to make him/herself bankrupt under section 88 and Civil and Commercial Code section 1266. Even though, the Bankruptcy Act B.E.2483 was corrected and added for 7 times but still never corrected and added to give right to individual debtor to petition for bankrupt. It has only the case that liquidation of juristic person debtor petition for bankruptcy according to section 88. According to Bankruptcy Act B.E.2483, this bankruptcy law included all those being corrected until now has still not given individual debtor to petition for bankrupt. This has a view point to give advantage to creditor to be repaid most. Though the bankruptcy law in Thailand gives a chance for debtor to enter into "Automatic

¹⁴Praworapakpi boon, History of Thailand Law, p.42.

¹⁵Ibid.

Discharge”&”Fresh Start” system. However, it is still obstruct debtor to enter bankruptcy process easily.

If we look at the history of international and Thai bankruptcy law, we can see that bankruptcy law has changing all time to meet the requirements of economics and society in different periods of time. The law was enacted and used to give more advantages to creditors, for example, enacted provision of criminal crime for a debtor who petition for bankruptcy dishonestly and the early bankruptcy law regulated the punishment for debtor who could not pay or manage his/her debt by punishment for example, death sentence, tortures, imprisonment or even slavery to get money to pay the creditor. This is a point that bankruptcy law in early period of each society and country gave more privileges to creditors rather than debtors. Later, people realized that if they wanted to advantage the society, debtors and creditors from bankruptcy law they had to encourage debtors to manage his/her debt by amended the voluntary bankruptcy system.

We can see that there was a development in the form of motivation to persuade a debtor to take part in voluntary bankruptcy system. This gave advantages from the cooperation of debtor as the debtor took part in collecting assets for selling so debtor could repay to creditor, this making the creditor to be repaid more (From the idea of forgiveness and raising motivation to debtor to cooperate).

As mentioned above, we can see that bankruptcy law in each country depends on the state of economic and society including all other related factors in the country. If we look in history, we can see that Thailand have the same development in bankruptcy law followed the insolvent law of England. After we studied the history of bankruptcy law, we can conclude the concept of voluntary bankruptcy for individual debtors as follow.

B. The Concept of Bankruptcy Law

The record attached with the Bankruptcy Act B.E.2483 has pointed out the aims of the bankruptcy law in 5 items as follow¹⁶:

1. Not permit the creditor to rush their debtor to pay for their own benefit only like in the civil case. The creditor who is the plaintiff in the bankrupt case, they need to conduct things to be the benefit to other general creditors as well. And the creditor will have opportunities to receive pay back in most or least average as fair enough as the bankruptcy case cannot conspire easily as the civil case.

When someone is bankrupted, the official receiver has to announce to the public in the gazette and the daily newspaper. All creditors of the bankrupted will have a chance to prove their debt in the limit time period (2 months) by equally which in the civil case the accuser and the culprit may pay their debt by no others creditor know.

2. Not to let the creditor made the agreement with the debtor secretly or use the plot to take an advantages from other creditors. The creditor who is an plaintiff in the bankrupt case cannot agree to quit the case with the debtor alone though the debtor who be sued will agree to pay for the plaintiff completely. When the creditor who is a plaintiff aims to withdrawn the suing, they need to ask for the court permission and the court will not allow until there is an announcement to the get and loss to argue in the suitable time.

If the creditor received the property transfer from the bankrupted, by taking advantages on other creditors within 3 months before the debtor will bankrupt. The transferring will be withdrawn by the official receiver and while the debtor still in the period of bankrupted, they will unable to give advantages to the creditor by no permission from the official receiver or the meeting of the creditor because the right to manage the property of the bankrupted are done by the official receiver.

¹⁶The record attached with the Bankruptcy Act B.E.2483.

3. The creditor will have more convenience in debt paying than in the general civil case. By the method of request to pay the debt to the official receiver which is a capital fee and ease the job of the Court of Justice also.

Creditor of the bankrupt case, who aims to receive the percentage from the property of the culprit to pay for their debt, has to forward the form to pay the debt to the official receiver only. There is no need to sue; the bankrupted is the new case raising then they will submit the petition for dividing the property from another level of the court like in the civil case. So they can receive the debt payment easily and quickly, few of fee and the court do not waste their time judge on the case about the debt of the bankrupted individually and viewed as a benefit to the creditors.

4. To protect the public from those who has amount of the debt to tease to get their property or made the debt that they cannot pay. Who else tie themselves by trusting the bankrupted for example, lending (there is no way to ask the bankrupted to pay the debt because the debt that occur between the bankrupt period, the creditor will not able to bring it to prove. And for the bankrupted themselves, if they loan some money from anybody more than 100 baht by not telling anyone to know that they are still in the case period, they can be jailed.

5. To help the honest debtors to free from the debt faster than limit in the ordinary civil case and to let them have the opportunity to stand again. But if the debtor corrupt they will be punished, this is very important that pointed that the bankruptcy law will be to the debtor also. Generally the debtor in the civil case will free from the debt by using the law provision of the prescription of sue case when the creditor not use their right continually in maximum of 10 years. But if the creditor and the debtor cause the stopped on the case age, then they should begin to count at 1 again. There are a few chances for the debtor to free from their debt by the limitation of the prescription in the civil aspects. For the bankrupted case, the debtor who work honesty but has to face with the damages as their luck have a chance to ask to free from the debt since the time that the court investigated for several months after being sued. Actually, for the case that there are an debt agreement between the bankrupted and the creditors, when the court prefer with the agreement to compromise the debt, the debtor still have a chance to free from the debt faster. However, the law will help

only the honest debtor, if it happen to be corrupted, they will be no help instead they will receive the penalty as well.

However, the bankruptcy law will aim to the benefit for both the creditor and the debtor for the benefit of population as mentioned above. As mentioned, but it doesn't mean that the content defined in the provision objective in bankruptcy law is only accept by the universal. To built the good and effective bankruptcy law, as it is the commercial law that is one of tool to control the situation of the economic and society of the country that need to be develop in suitable with the economical environment and society at that time. The bankruptcy lawyer of Thailand Mr. Wisit Wisetsorraat said about the objective of the bankruptcy law that it should be conformed with the directions as follow¹⁷:

- a. The bankruptcy law should has management process to make the creditors receive the normally and expectable debt payment.
- b. The bankruptcy law must have the mechanism to make over the maximum rate of the property pile.
- c. The bankruptcy law must open the opportunity to re-engineering the business case or recovering the suitable case.

C. The Benefit of Bankruptcy Law

1. The Benefit from the Creditor View Point

The bankruptcy law is the establishing of the measure to manage the debtors' property to pay all of the debt to the creditor in the characteristic of co-benefit and in the same time (Collective Measure¹⁸). And this way of management is an approach to force the paying as it is the process to bring the debtors' property

¹⁷Sutee Supranit, Bankruptcy and Rehabilitation (Bangkok : Winyuchon Publishing) 5 (3rd ed. 2004).

¹⁸Collective Measure means An activity undertaken by more than one country to achieve an agreed-upon end, Henry Campbell, Black's Law Dictionary (United States: West Publishing Co.) 280 (8th ed. 2007).

to pay. Therefore, the bankruptcy law aims to preserve and help the creditor in several ways for example;

a. The creditors should have equality (*pari passu*¹⁹) which means receive the part dividing respectively of the equal debt characteristic, no one cannot gain more benefit²⁰. Thus, if some creditor and debtor agree to give advantage secretly or esp. for the creditor that be able to faster sue the debtor in the case of first come first serve basis. Thus, the case that give secret advantages to some creditor which seen as the disadvantage of other creditors. The bankruptcy law has stated the penalty of the criminal case.

b. Allow the creditors to be convenience by quick service and low cost of fee for example, allow the creditor to submit the debt pay request easily. The consideration will be done quickly not slow as in the general the civil case in the same time the fee of the bankrupt case will lower than in the general civil case the civil case which is 2.50 baht for every 100 baht according to the capital of property but not more than 200000 of the property capital in other word, the bankrupt case will pay for the court only 15 baht and the creditor who request to pay the debt will pay the fee for 25 -200 baht as maximum²¹.

c. The bankruptcy law created the process to follow up the debtor's property to be benefit to the creditors²². It is better than the property following under the suing process of the general civil case for example, limited the debtor to responsible to describe the information and send the property or the right of request to the official receiver and the provision of the duties description for the official receiver to ask for transferring withdrawal which the debtor conduct between 3 years before bankrupt.

d. There are several punishment provisions for the debtors in criminal case to prohibit the corruption of the debtor which not stated in general civil case.

¹⁹Pari Passu means Proportionally, Henry Campbll, Black's Law Dictionary (United States: West Publishing Co.) 1147 (8th ed. 2007).

²⁰Bankruptcy Act B.E.2483, Section 115.

²¹Ibid., Section 13, 153, 179.

²²Ibid., Section 114.

2. The Benefit from the Debtor View Point

The bankruptcy law is not a tool to help only the creditor side but also help and be benefit to the debtor in the same time, as the bankruptcy law is the commercial law that stated the policy to help the honest debtor who has bad luck. Thus, the bankruptcy law is also the tool to conquer the corruption debtor as well by:

- a. Helping the honest debtor to free from the bankrupt and has a chance to set themselves up again for example, the provision in compromising the debt, withdrawn from the bankrupt and bankrupt cancellation etc.
- b. After the debtor go through the process of bankrupt, the will preserve from the bankrupt process. Thus, the creditor cannot threaten or force them to pay the debt from the general civil case sue. It means they will have benefit from the process of debt pay rest or the Automatic Stay process.
- c. The official receiver will be the represent to manage the entire debtor's property. Who are the debtor of the bankrupted, the official receiver will follow the debt if the bankrupt has sued in the court, and the official receiver will operate the case instead from (section 22, 25, 119 and 120)
- d. This is an open opportunity for the debtor to show their honest to cooperate in the process of property gathering and agree to be in control.

D. The Bankruptcy Law in Thailand

1. Condition to File a Bankruptcy Petition

In Thailand under the Bankruptcy Act B.E.2483 conditions to begin the bankrupt case can do by:

- a. Made it by Complain

By using the same idea as the request for sues in the general civil case and people who may be sued or to sue in the bankrupt case can be either individual

person or corporate. Beside the debt, the creditor may ask to sue for managing the property of the debtors that have passed away²³.

b. Made it by Petition

(1) For the case of the individual account payer that ask the court to judge person to be bankrupted, if it occurs that all the capital or the stock money have been paid but it still not equal to the debt²⁴.

(2) For the case that the creditor who is the accuser or the official receiver submit the request to the corporate who are a partnership but not limited to the responsible of the company to be bankrupted when it occur that the court have order to protect the assets of the ordinary partnership which has registered as the company limited²⁵.

It can be seen that the provision of the bankruptcy law of Thailand has not left an opportunity for the individual debtor to be able to begin the process of bankrupted by themselves by not think that the individual debtor will be the honest debtor or not. Those unpermissions of the rights close an opportunity for the individual debtor who has the insolvent debt to receive the benefit of fresh start under the discharge process from bankrupted or automatically free from being a bankrupted.

As the debtors cannot go through the bankrupted process it results on them to be threaded by forcing to pay by the creditor while they have insolvent debt. This results to the debtor as the y cannot conduct the business or their own affair and may open an opportunity for the debtor to unfairly rush the debt and it is an aggravation on the debtor instead of them to be able to continue their business to find the money to pay for debt. On the other hand, it will result to the debtor to give up and stop doing the business because the pressure from the creditor with comes from the unfair force of debt payment.

²³Ibid., Section 82.

²⁴Bankruptcy Act B.E.2483, Section 88 and Civil Procedure Code, Section 1266.

²⁵Bankruptcy Act B.E.2483, Section 89.

2. Process of Bankruptcy Law

a. Receiving Order

The administration does not commence until a receiving order is made against a debtor. To obtain such order, a creditor will have to file a bankruptcy petition against the debtor and satisfy the court of the required grounds under the BA, sections 9 and 10. The trial for the issue will be set and the outcome will depend upon the evidence (BA, section 14). Once the receiving order is made against a debtor, he will, by the effect of the order, cease to have control over his assets which, by law, are vested in official receiver.

It should be noted that at this debtor is not yet bankrupt in law, although he is not far from it. It is the obligation of the official receiver to proceed further, that is to forthwith advertise the order, call the first creditors' meeting and make a public examination of the debtor in court (BA, sections 28, 31 42 and 43).

b. Meetings of Creditors

The first creditors' meeting is crucial for the debtor since the matter is for the creditors to decide whether the debtor should be adjudicated bankrupt (BA, sections 31). The debtor may submit a proposal in the meeting of creditors to settle the issue which, in order to succeed, will need a special resolution in favor of it, for example, a resolution by a majority of creditors whose claims equal three-quarters of the total claims of creditors present at the meeting personally or by representation and have voted on such a resolution (BA, sections 6). The proposal is forbidden if it is against the principle of "pari passu", for example, proportionate distribution. Unless the proposal is successful, the case will be redirected to the court and a bankruptcy order will then be made.

Other creditors' meeting may be called by the official receiver at such time as may be proper, compulsory by law, court order or demanded by the required number of creditors (BA, sections 32).

c. Composition and Realization of Assets

It is the responsibility of the official receiver, with assistance from the creditors, to undertake the composition of all assets which are distributable under bankruptcy law. The power of the official receiver in this respect is far wider than that of executing officers. The process may involve seizure of property in a similar manner to the enforcement of judgments in civil cases. However, property belonging to third parties may also be seized if it is in the possession or disposition of the debtor in the course of trade or business of the debtor by consent of the owner under the circumstances which create the view that the debtor is the owner when the petition in bankruptcy is filed against the debtor (BA, sections 109 (3)).

Further, the official receiver is entitled, under the BA, sections 118 and 119, to claim a payment of money or demand the delivery of property from the bankrupt's debtor. The aforementioned claim or demand will have to be in the form of a written notice informing such person that he will be deemed to be indebted as such unless he submits his denial in writing with reasons to the official receiver within 14 days from the date the notice takes effect.

When the denial is submitted, an investigation will be carried out by the official receiver to determine whether or not the bankrupt's debtor is actually indebted to the bankrupt. If the official receiver believes so, a second notice will then be served upon the bankrupt's debtor and he, if objecting to it, must apply to the court for a hearing on such issue within 14 days.

In cases where there is no objection from the bankrupt's debtor or the court has made an order against him, if the demand or court order is not then complied with accordingly, the official receiver is empowered to apply for a writ of execution against such persons and enforce it in the same manner as in civil cases.

The composition does also include the process of recovery of the assets disposed of by the bankrupt to third parties. The official receiver may apply, by motion, to the court to nullify the transfer of property on the following grounds:

(1) Fraudulent transaction under, the BA, section 113.

(2) Dishonest transaction made within three years preceding the petition under the BA, section 114.

(3) Transaction made within three month preceding the petition with the intention to prefer some creditors under the BA, section 115.

The composed property may be sold by the official receiver in any manner which is convenient and most beneficial to the creditors. However, a sale other than by auction will require the approval of the creditors' committee, except where it is permitted by law (BA, sections 19, 123).

d. Distribution

To be entitled to the dividends of the assets of the bankrupt, every unsecured creditor is required to submit a formal claim, known as a proof of debt, to the official receiver within a period of two months from the date of publication of the receiving order (BA, sections 91). The claim has to show that the debt in question is provable under the BA, sections 92-94. Secured creditors can submit a formal claim only if they have complied with one of the conditions under the BA, section 96.

The official receiver will, without delay, examine all the claims and subsequently report to the court which will finally decide whether each claim should be dismissed or allowed in full or in part (BA, sections 104-107).

Preferential debts and expenses of the official receiver have priority over other claims and will be paid out in the order stated in section 130. Ordinary debts rank equally among themselves and will be paid out on a parri passu basis, for example, proportionately. Payments must be made at all times not exceeding six months from the date of the bankruptcy order, unless the court permits an extension of time (BA, sections 124).

3. Termination of the Administration

The administration of bankruptcy (BA, sections 63); discharge order (BA, sections 72); termination of bankruptcy order (BA, sections 135); and close of administration order (BA, sections 133). Whereas the first three orders may release the debtor from his debts in part or in full, depending upon the type of order, the close of administration order does not have such effect. It merely stays the case until it can be reopened.

E. The Idea for Giving Debtors Proposes a Petition for Voluntary Bankruptcy for Individual Debtors

The system of petition for voluntary bankruptcy created continuously from the idea of debtor forgiveness and idea of giving debtor a fresh start. It was created in the middle period of the 18th centuries by the provisions of law in the United States of America. In this period, the idea of bankruptcy law changed from the system of punishment to the system of forgiveness. This giving a chance to debtors to start a new life because debtors can restore their financial state after discharged. It is a way to persuade debtors to show their asset that they conceal to makes repayment to creditors. The concept of giving a chance for debtor to restart their financial state not just only want corporate of debtor but also concern about the principle of humanity and give more protecting to debtors.

However, the voluntary bankruptcy system appeared in the same time with the system of allowance to discharge from bankruptcy, so there have idea of developed those 2 systems in the same way.

1. The Idea that Debtors Know themselves the Best

In bankruptcy law, the law is a tool to control a debtor, who doesn't have the ability to repay his/her debt. The ability to repay debt on the state of insolvent in debt is the specific status of debtor. Therefore, the one that knows and understand his/her financial status the best is the debtor him/herself. Anyway, for some debtors who want to conceal their debts from creditors, creditors still can petition for bankruptcy to the court under involuntary bankruptcy system.

2. The Idea to Give Mercy to Honest and Unfortunate Debtors

There are two kinds of debtor in loan and credit system which are trading debtor and consumer debts debtor. There are many loan states that make the debtor unable to pay his/her debt because of unexpected circumstances. For example, trading loan that is effected by a nature disaster or consumer loan when the debtor has to pay a big amount of money due to his/her illness. Therefore, it is obvious that some kinds

of such situations happen because of the unfortunate that may happen to the debtors so it make debtors become insolvent debtor. However, the idea to give mercy to an honest debtor to have a chance to enter bankruptcy process is supported by the following reasonable idea as follows.

Kindness theory has realized the true value of a debtor that is in the state indebtedness or becomes bankrupt. The worth of debtors is destroyed because of the pressure from debt obligations. Thus helping debtor to free from debt obligations help debtor to get back to social life and maintain the worth of him/herself but also give benefit to society. If members in society have more kindness to each others, it will help to upgrade the mind of members in that society (make us all better people).

It is certainly that allowance to file petition for voluntary bankruptcy especially for individual debtor certainly affect the majority of debts in the system which are consumer debts. Some creditors think that for those consumer debts to be discharged from the debt by process. In addition, petition for voluntary bankruptcy affects the right of creditor for using the right under the condition of prescription in case a creditor wants to ask for the highest rate of interest. A creditor can choose whether to give mercy to every debtor or not but voluntary bankruptcy forces a creditor to give mercy to every debtor equally. However, not every creditor has to take part in loan obligation of insolvent debtor because some creditors lend money carelessly.

Thus giving right to debtor (which may petition for bankruptcy dishonestly) to petition for bankruptcy and creditor who decided to forgive debtor instead of have a chance to get interest, under this idea of mercy cause problems about laying measure to consider if every debtor should be given the right to petition to enter into the process of voluntary bankruptcy in any case or not. Therefore, it is about laying measure to control.

3. Idea of Debtor Cooperation

The petition of voluntary bankruptcy in bankruptcy system is a first major fact to prove the honesty of debtor. That is, finding the reason that he/she chooses to petition him/herself under control by bankruptcy system. For example, if debtor still has some ability to repay debt but choose to bankrupt to avoid repay debt. However,

debtor will get advantage from bankrupt depend on his/her honesty and cooperation. The petition of voluntary bankruptcy of honest debtor means debtor wants to have him/herself under control. Therefore, the law give chance to individual debtor to enter into bankruptcy process is an honest cooperation to be bonded and gather assets for repaying to creditors.

4. The Social Utility Theory

Giving a chance for debtors to petition for him/herself to entering into bankruptcy system is advantage to some creditors who does not have ability to claim in common civil case. At the same time, it is advantage to society because debtor will be controlled not to make anymore debt with others people in the society. The idea that made debtors can make his/her petition is a way to speed up honest debtor to free from debt quickly. This encourage debtor to get return to make benefit to economic system. If debtors is not given right to petition for voluntary bankruptcy, they will not have motivate to back to economic system again because creditor will take all advantage from debtors until all debts are paid. This will fill the gap in economic system and protect state of economic and society as a whole.

5. The Idea of Giving too much Credit

Dean Jackson explained the good point of discharge from debt and why must has debt discharging. He explained that because of giving too much loan credit and the discharge from bankruptcy make balance to the system. However, as explained above, if debtor cannot reach bankruptcy system then debtor cannot release from his/her debt. So if bankruptcy law gives right to honest insolvent debtor especially individual debtors to petition for bankruptcy. Then debtor will have a chance to release from debt more quickly and decrease the right of creditor to control civil life of debtor. The above reason was one of the major to help making balance of giving too much credit.

F. The Main Principle for Giving Debtors Proposes a Petition for Voluntary Bankruptcy for Individual Debtors

1. To be Consistence with the Objective of Bankruptcy Law

The main objective of bankruptcy law is to give benefit to creditors to get money equally at the same period of time²⁶. It is also save time and cost and gives benefit to debtor by the “automatic stay” system. Moreover, it gives debtor a chance to composition of debt and discharged from bankruptcy. It also gives benefit to society by controlling insolvent debtor which cause trouble to economic and society. Thus, this gives a chance for debtor to file a petition for voluntary bankruptcy in order to have debtor to be supervised and care by bankruptcy law according to the objective of bankruptcy law.

2. To Give a Chance for Debtor to be Released from Debt and Start a New Life is Actually the Support for the Principle of Debt Forgiveness

The idea of debt forgiveness originates and has developed for ages before the voluntary bankruptcy system. The idea of discharge from bankruptcy is to give debtor's mercy to have a way out to restart a new civil life. However, should a law provide only the exit, but not the entrance? It does not truly give debtor to start a new life voluntary and it is considered as giving conditional mercy which contradict the principle of debt forgiveness. Therefore, allowing debtor to petition for voluntary bankruptcy for individual give debtor a chance to be discharged and start a new life and is regarded as a support for the idea of bankruptcy discharged.

3. To Give Debtor a Choices

As mentioned earlier, the state of insolvent and ability to repayment, debtor know it he best. Therefore, give the debtor's right to petition for bankruptcy voluntary is the way for debtor to consider and evaluate self-status if he/she should deserve

²⁶Bankruptcy Act B.E.2483, Section 115 and 90/41.

become bankrupt or entering into alternative solution such as business rehabilitation or composition of debt prior to bankruptcy or method of voluntary arrangement.

4. To Aim for International Bankruptcy Law Correspondent in Voluntary Bankruptcy System

Recently, investment and lending do not limit only domestically. In reality, this is a globalization world which capital flow internationally and international trade. Therefore, when debtor are insolvent which lead to an impact in asset accumulation and the bankruptcy law procedure in many countries. Consequently, many countries consult and negotiate in international bankruptcy law or cross border insolvency for an agreement. However, the sovereignty within allow them to legalize freely and don't accept judgment from other country. Which lead to the problem in bankruptcy law and the enforcement of verdict from any court of law. However, one measure to resolve the overlapping is to use law which is based on the same principle. In the provision of the voluntary bankruptcy, it is content correspond with main objective and a guide to enact good provision and effective law of UNCITRAL. Therefore, to enact provision of voluntary bankruptcy is to enact law to support the future possible international bankruptcy law.

5. To Aim for Creditor's Balance and Power

A specific characteristic of bankruptcy law are triangle balance of payment of creditor, debtor and citizen. In bankruptcy procedure, there is a provision of discharged from bankruptcy under the idea of debt forgiveness for honest debtor in order to give alternatives for debtors to start a new life. Which in some countries, only creditor can petition to make debtor become bankrupt that mean it is depend on mercy of creditor only. Creditors who decide to sue debtor bankrupt may loose his/her debt under the process of discharging from debt. Therefore, creditor decide not to sure debtor bankrupt to avoid damage (non performing loan) that will occurs which finally it is against the objective of bankruptcy law.

Therefore, if there is a law to give right to debtor to be able to petition him/herself to entering bankruptcy process, then it is a balance of power from creditor

back to normal state. However, those who enact should provide more measure to screen and control only honest and proper debtor to get benefit.

6. To Aim to Give Debtor a Chance to Show His/Her Honest

Formerly bankruptcy law was originated from that creditor took it as guild with a debtor and get repay from debtor. The bankruptcy law in that age was a kind of enforcement but when bankruptcy law change to persuade debtor to participate in collecting their asset as much as possible and have an idea of debt forgiveness to debtor. However, the idea of forgiveness is aim for honest debtor only. Therefore, any debtor who find that he/she is in state of insolvent petition for a bankrupt without waiting to have a lot of debt and to be under control of bankruptcy process. These show his/her honestly to creditor and also give benefit to creditor and people in society. Therefore, the principle that gives debtor to petition for bankruptcy voluntary is a chance for debtor to show his/her firstly honest.

7. To Aim to Push for Compromise or Force Debtor Alternative Choice which is not Bankrupt

That is debtor can petition him/herself into process of bankruptcy which debtor have a chance to use several measurements under the process of bankruptcy law such as the composition of debts prior to bankruptcy, business rehabilitation or voluntary arrangement. Hence, when entering into the process of bankruptcy, measurement for selection only proper debtor that suitable to go bankrupt would continue automatically. Thus some creditor may choose to composition as requested by debtor or choose other choice such as business rehabilitation and some debtors does not want debtor to go bankrupt and get benefit from discharged system. Therefore, giving a right to debtor to petition for bankruptcy voluntary is a motivation to have composition of debt and business rehabilitation eventually. In addition, it helps each debtor to enter into the process that benefits the most.

G. Discussion of Advantages and Disadvantages of the Voluntary Bankruptcy for Individual Debtors

According to the voluntary bankruptcy system, I suggest that an honest debtor should have a chance to begin a “new life”. A financial problem that a debtor has may be not because of his/her mismanagement or dishonesty which is uncontrolled situation such as an increase in the oil price, natural disasters or sudden changes of government will cause financial crises. Therefore, every honest debtor should have a chance to restart his or her business and life. The economic development will not affect by this amendment because the present Bankruptcy Law leaves no other choices to debtor and his or her company. Debtor does not have many options to avoid bankruptcy. Therefore, most of the time debtor tries to hide his or her accessible assets or choose not to work because most of his or her salary or any kind of compensations will be embellished to repay his or her creditors. No one benefits by these circumstances, so debtor should pay all his or her debts with all the assets that he or she has.

Both creditors and debtor can get benefit by voluntary bankruptcy. If the debtor cannot afford all his or her liabilities, either debtor is petition for bankruptcy by creditors or debtor declares himself or herself bankrupt, the creditors will receive the shares equally the same. Using this scheme, the debtors will be more willing to cooperate with the creditors to gather their assets and they will be discharged from bankruptcy after a certain amount of time if the debtors help the official receiver and behave as an honest debtor. This benefits the debtors although they may lose all their obliged assets, but they will be free from all their financial obligations and start a new life. As benefit to society as a whole, the discharged debtor will again become efficient member of society and working towards its progress and development. The philosophies of the market-driver economy together with voluntary bankruptcy encourage people to do business. This encourage competition among businessmen to manage all limited resources to the greatest possible degree, as a result, new technology, product and services are grown up to ease the daily life of the citizen of the world. Moreover Thai people have to prepare themselves for fierce competition

from aboard in order to prepare Thailand for the free trade era. And in supporting people to take risks in doing baseness, bankruptcy law have to play a part as a safety net by enacting a voluntary bankruptcy amendment.

However, there are many opponents to the voluntary bankruptcy system and they have a large number of concerns. One of them is that the system would become a serious moral issue for Thai, as people could get used to reckless spending and they would have an idea that they would not have to make the repayments once they were indebted. Though, if they happen to be indebted they must work even harder to repay their loans. Moreover, this will affect all the financial institutions, since they would have to calculate the risk of non-performance loans when they reckon the appropriate interest rate for the deposit and loan. The interest rate of a deposit would fall. It would be more difficult for a businessman to secure financial support. The voluntary bankruptcy system would just be market obstacle but it would not help the debtors unless they do not change the spending habits. Otherwise these people would be indebted all over again. The government should allow all debtors to deal with their financial situations by themselves; the government should create more markets for businessman & create more jobs. Another concern of the opponents to the system is that the relationship between the debtor and the creditor would worsen. People who need financial aid might be rejected from getting loans, as the credit will fear a bankruptcy petition from the debtor on the future. There is also a choice that some creditor might use violent and unlawful methods to make the debtors pay their loans. Further more, it is not easy to tell whether the debtor is honest or not. If the proposed amendment is enforced, this might motivate dishonest debtor to hide their assets & refuse to pay their debts.

Chapter 3

Voluntary Bankruptcy for Individual Debtors in Other Countries

There are two methods of voluntary bankruptcy system. The first is the lodging of the bankruptcy petition by the debtor; the second is where the debtor proposes a voluntary debt arrangement or agreement with the creditors to have a hair cut and/or pay his or her debts in installments within a certain period of time. This research deals exclusively with the first alternative. Before getting into the other details of voluntary bankruptcy, it is necessary to take a look at the bankruptcy laws of other countries concerning voluntary bankruptcy for individual debtors.

A. UNCITRAL Legislative Guide Model Law on Insolvency Law

In the part of the international unit like UNCITRAL gave the opinion to the recommendation draft to the launch of the bankruptcy law (UNCITRAL Legislative Guide on Insolvency Law) in the 37th²⁷ conference which defined the objectives that should be used as a guideline to launch or re-content the bankruptcy law in 9 ways.

1. Provide certainty in the market to promote economic stability and growth
2. Maximize value of assets
3. Strike a balance between liquidation and reorganization
4. Ensure equitable treatment of similarly situated creditors
5. Provide for timely, efficient and impartial resolution of insolvency
6. Preserve the insolvency estate to allow equitable distribution to creditors
7. Ensure a transparent and predictable insolvency law that contains incentive for gathering and dispensing information

²⁷ Draft Legislative Guide on Insolvency Law, available at <http://www.uncitral.org/uncitral/en/commission/sessions/37th.html>. (last visited July 12, 2008).

8. Recognizing existing creditor rights and establishes clear rules for ranking of priority claims

9. Establish a framework for cross-border insolvency²⁸

The purpose of this UNCITRAL model law on cross-border insolvency is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of²⁹:

- a. Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
- b. Greater legal certainty for trade and investment;
- c. Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- d. Protection and maximization of the value of the debtor's asset; and
- e. Facilitation of the rescue of financially troubled businesses. Thereby protecting investment and preserving employment.

Thus, when analyzing the guideline of the Thailand bankruptcy law development to conform to the best practice and effective bankruptcy law, it can be seen that to give an opportunity to the debtor to ask for bringing themselves through the bankrupt process. Beside to make those debtors gain the benefit from the bankrupt process as well as the creditor and the population will also gain benefit from the agreement of the debtor as well. This also gives the debtors real chance to get the new life. Thailand bankruptcy law, after the debtor was asked by the creditor and the court ordered the debtor to be bankrupted, the debtor then will withdrawn from the responsibility of debt by the discharge process of bankrupt. It giving the debtor a chance to begin the process by themselves, it will lead them to the discharged from being bankrupt and can have quicker Fresh Start as it no need to wait for the creditor to ask for, thus the writer will continue describe.

²⁸ Ibid.

²⁹ Sawanun Suwangota, "Draft UNCITRAL Model Law on Cross-Border Insolvency," Dulapata Law Journal (January-June 1998): 20-30.

B. The Law of Voluntary Bankruptcy for Individual Debtors in Other Countries

1. The Law of Voluntary Bankruptcy for Individual Debtors in The United Kingdom

The insolvency act 1986 divided into three groups and each group has many parts. The first group of parts was the provision relating to the company insolvency and company winding up. The second group of parts was the provision of insolvency of individuals and bankruptcy and the last group was miscellaneous matter bearing on both company and individual bankruptcy. The insolvency act 1986 was amended two times by the insolvency act 1994 and the insolvency act 2000. However, the law that focuses on insolvency of individual still on the insolvency act 1986.

In England, There is no special court like Central Bankruptcy Court in Thailand. The petition can be presented in the High Court and County Court³⁰.

a. Condition to File a Bankruptcy Petition

According to section 264(1) - A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part.

(1) By one of the individual's creditors or jointly by more than one of them,

(2) By the individual himself,

Grounds of creditor's petition

The debt on which a creditor petitions must satisfy the following conditions:

(a) it must equal or exceed the "bankruptcy level", currently £750(s 267(4));

³⁰ Steven A Frieze, Handbook of Bankruptcy and Personal Insolvency, p.19.

(b) it must be a liquidated sum, payable either immediately or at some certain future time and be unsecured (s 267(2)(b)); and

(c) it must be a debt which the debtor appears either unable to pay or to have no reasonable prospect of being able to pay (s 267(2)(c)).

Grounds of debtor's petition

(a) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts (s 272(1)).

(b) The petition shall be accompanied by a statement of the debtor's affairs containing:

(c) such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(d) such other information as may be prescribed (s 272(2)).

b. Process of Bankruptcy Law

The debtors will become bankrupt instantly when the order is made by the court. Then, the official receiver will act as the debtor's trustee in bankruptcy, except the court appoints an insolvency practitioner to take this role. The officer of the court will be responsible for managing the debtor bankruptcy and protecting the debtor assets from the date of the bankruptcy order. In addition, the trustee in bankruptcy is responsible for taking care of the debtor's financial affairs for period before and during bankruptcy. If it indicates that the debtors may have committed criminal offences Connection with the debtor's bankruptcy, then the official receiver must also report to the court.³¹

c. Court

Bankruptcy petitions are usually presented at the High Court in London or at a county court near to where you trade or live. A petition can be presented against you even if you are not present in England or Wales at that time.

³¹A summary from The Insolvency Service, Guide to Bankrupt, available at <http://www.insolvency.gov.uk/guidanceleaflets/guidetobankruptcy/guidetobankruptcy.htm>. (last visited July 20, 2008).

Sometimes government departments start bankruptcy proceedings in the High Court in London or in one of the District Registries. If you did not trade or do not live in the London area, your case will usually be transferred to the appropriate local county court and, if a bankruptcy order is made, it will be dealt with by the local Official Receiver.

Once the bankruptcy order has been made, it is advertised in "The London Gazette" (an official publication which contains legal notices) and in a local or national newspaper (or both). In addition the Official Receiver will give written notice of the order to a number of organizations.

d. The Official Receiver

An Official Receiver is appointed by the Secretary of State and is an officer of the court. The Official Receiver has responsibility for administering your bankruptcy and protecting your assets from the date of the bankruptcy order. He or she will also act as trustee of your bankruptcy estate unless an insolvency practitioner is appointed.

The Official Receiver is also responsible for looking into your financial affairs for the period before and during your bankruptcy. He or she may report to the court and has to report to your creditors. The Official Receiver must also report any matters which indicate that you may have committed criminal offences in connection with your bankruptcy or that your behavior has been dishonest or you have been in some way to blame for your bankruptcy.

The Official Receiver will give notice of the bankruptcy order to local authorities, utility suppliers, courts, sheriffs, bailiffs, National Savings and Investments (premium bonds), the Land Registry and any relevant professional bodies. Enquiries will also be made of banks; building societies; mortgage, pension and insurance companies; solicitors, landlords and any other persons or organizations who may be able to provide details of any assets or liabilities that you have, or have had, an interest in (either on your own or jointly with others). Third parties will also be asked about any other matters relating to your bankruptcy.³²

³² Steven A Frieze, Handbook of Bankruptcy and Personal Insolvency, p.93

e. Automatic Discharge

A person against whom a bankruptcy order has been made remains a bankrupt (unless that order is subsequently annulled) until such time as he is discharged. Discharge is automatic in the case of a person who has not at any time in the previous 15 years prior to the making of the bankruptcy order against him been bankrupt or, has not been made bankrupt as a result of a criminal bankruptcy order at the expiry of three years after the making of the bankruptcy order discharge occurs or, in the case of a bankruptcy where a certificate of summary administration is in force, at the expiry of two years after the making of the bankruptcy order (s279(1) and (2)).

However, if the court is satisfied, on the application of the official receiver, that the bankrupt has failed to comply with any of his obligations under the act, it may order that the period, after which discharge is to be automatically granted, ceases to run until the bankrupt has fulfilled certain conditions or until after a certain time has passed (s 279(3)).³³

2. The Law of Voluntary Bankruptcy for Individual Debtors in The United States of America

a. Eligibility

The relevant law is in Chapter 7 of the Bankruptcy Code, Title 11 of the United States Code. Entitled Liquidation, contemplates an orderly, court-supervised procedure by which a trustee collects the assets of the debtor's estate, reduces them to cash, and makes distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secure creditors.

b. Process of Bankruptcy

To qualify for relief under Chapter 7, the debtor must be an individual, a partnership, or a corporation. 11 U.S.C. § 109(b); 101(41). Relief is available under Chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is

³³ Ibid.

solvent or insolvent. However, amendments to the Bankruptcy Code by into the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 require the application of a "means test" to determine whether individual consumer debtors qualify for relief under Chapter 7. If such a debtor's income is in excess of certain thresholds, the debtor may not be eligible for Chapter 7 relief. A Chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual debtor has its principal place of business or principal assets. 28 U.S.C. § 1408³⁴.

In addition to the petition, the debtor is also required to file with the court schedules of assets and liabilities, a schedule of current income and expenditures, a statement of financial affairs, a schedule of executory contracts and unexpired lease, and a statement of financial affairs. Bankruptcy Rule 1007(b).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

- (1) A list of all creditors and the amount and nature of their claims;
- (2) The source, amount, and frequency of the debtor's income;
- (3) A list of all of the debtor's property; and
- (4) A detailed list of the debtor's monthly living expenses, *i.e.*, food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

c. Automatic Stay

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in

³⁴A summary from Administrative Office of the United States Courts, available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html>. (last visited July 20, 2008).

effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

d. Role of the Case Trustee

When a chapter 7 petition is filed, the U.S. trustee (or the bankruptcy court in Alabama and North Carolina) appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If all the debtor's assets are exempt or subject to valid liens, the trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors.

The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt) or if it is worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property. The trustee may also attempt to recover money or property under the trustee's "avoiding powers."

e. Discharge

A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor. Because a chapter 7 discharge is subject to many exceptions, though, debtors should consult competent legal counsel before filing to discuss the scope of the discharge. Generally, excluding cases that are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a party in interest files a complaint objecting to the discharge or a motion to extend the time to object, the bankruptcy court will issue a discharge order relatively early in the case – generally, 60 to 90 days after the date first set for the meeting of creditors.

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the U.S. trustee if the discharge was obtained through fraud by the

debtor, if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee, or if the debtor (without a satisfactory explanation) makes a material misstatement or fails to provide documents or other information in connection with an audit of the debtor's case. 11 U.S.C. § 727(d).³⁵

f. Chapter 15 : Ancillary and Other Cross-Border Cases

Chapter 15 is a new chapter added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It is the U.S. domestic adoption of the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") in 1997, and it replaces section 304 of the Bankruptcy Code. Because of the UNCITRAL source for chapter 15, the U.S. interpretation must be coordinated with the interpretation given by other countries that have adopted it as internal law to promote a uniform and coordinated legal regime for cross-border insolvency cases.

The purpose of Chapter 15, and the Model Law on which it is based, is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants and other parties in interest involving more than one country. This general purpose is realized through five objectives specified in the statute: (1) to promote cooperation between the United States courts and parties in interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) to establish greater legal certainty for trade and investment; (3) to provide for the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; (4) to afford protection and maximization of the value of the debtor's assets; and (5) to facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment. 11 U.S.C. § 1501.

³⁵ A summary from Administrative Office of the United States Courts, available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html>. (last visited July 20, 2008).

One of the most important goals of chapter 15 is to promote cooperation and communication between U.S. courts and parties in interest with foreign courts and parties in interest in cross-border cases. This goal is accomplished by, among other things, explicitly charging the court and estate representatives to "cooperate to the maximum extent possible" with foreign courts and foreign representatives and authorizing direct communication between the court and authorized estate representatives and the foreign courts and foreign representatives. 11 U.S.C. §§ 1525 - 1527.

If a full bankruptcy case is initiated by a foreign representative (when there is a foreign main proceeding pending in another country), bankruptcy court jurisdiction is generally limited to the debtor's assets that are located in the United States. 11 U.S.C. § 1528. The limitation promotes cooperation with the foreign main proceeding by limiting the assets subject to U.S. jurisdiction, so as not to interfere with the foreign main proceeding. Chapter 15 also provides rules to further cooperation where a case was filed under the Bankruptcy Code prior to recognition of the foreign representative and for coordination of more than one foreign proceeding. 11 U.S.C. §§ 1529 - 1530.

The UNCITRAL Model Law has also been adopted (with certain variations) in Canada, Mexico, Japan and several other countries. Adoption is pending in the United Kingdom and Australia, as well as other countries with significant international economic interests.³⁶

C. The Number of Issues for Consideration

After studying the laws concerning voluntary bankruptcy for individual debtors in the United States of America and United Kingdom and review the idea and principle of individual bankruptcy for individual debtor, there are a number of issues

³⁶ Ibid.

to be considered before the recommendation on the amendment of the present Thai Bankruptcy Act is proposed³⁷.

1. Eligibility to File a Petition for Bankruptcy

An individual debtor who is a natural person can apply for bankruptcy. The new amendment should aim solely at a natural person excluding an ordinary partnership and a limited partnership because those who are affected most by the current Bankruptcy Act are the debtors who are natural persons. Since this is a new law, the drafters cannot predict all of the subsequent repercussions. Therefore, limiting the availability of this novel proposal to a natural person would be better. If the new enactment proves to be beneficial to the economy as whole, the lawmakers could then extend the term "individual debtor" to include an ordinary partnership and a limited partnership. In the meantime, the bankruptcy proceedings for partnerships should compulsory as stipulated in Chapter 3 of the present Act.

To qualify for filing a bankruptcy petition, the law should set a minimum amount of debts the debtor owes. I suggest the debtor must be insolvent and indebted to one or several creditors amounting to not less than one million baht. In Thailand, if the legislators do not set a minimum debt for bankruptcy filing, there will be a caseload problem. The debtors who owe little money due to their recklessness with money or overuse of their credit cards will all apply for bankruptcy. These types of debtors are not the target group 'of the new amendment. Releasing these debtors will have little impact on the economy. By saying that, I do not recommend that the debt owed could only be occurred from business dealings. It could also be as a result of consumption but the amount owed needs to reach the minimum threshold of one million baht. Above all, the debt must be incurred legally. This will exclude debts arising from betting or illegal trade to be used as a cause for bankruptcy petition. The debtor may not file a bankruptcy petition in the following cases : (1) the court has ordered the debtor to be under an absolute receivership; and (2) the debtor has been adjudged as a bankrupt and a period of five years has not passed since that time. If the

³⁷ Kanok Jullamon, The proposal of Voluntary Bankruptcy for individual debtors in Thailand, pp.70-77.

creditors decide to file a bankruptcy petition, it means that the debtor has waived his or her right to declare himself or herself bankrupt. This paragraph is needed because it will prevent dishonest debtors from abusing the law by applying for bankruptcy every time he or she has debts.

2. The Place to File a Bankruptcy Petition

As in the case of the procedures of other countries, the debtor will apply the petition either at the Court or the government organization entrusted with bankruptcy matters. In Thailand, there is an argument about whether the debtor should hand in a bankruptcy petition at the Central Bankruptcy Court (CBC) or at the Legal Execution Department (LED), Ministry of Justice. The Legal Execution Department is an administrative body in the judicial procedures. Its principal mission involves the execution of civil judgments, bankruptcy administration, business reorganization, and the deposition of property and liquidation.³⁸ The LED asserts that presently the CBC is in charge of compulsory bankruptcy and reorganization of limited companies and public limited companies. It is obvious that the Court has a large amount of tasks on its hands. Thus, the bankruptcy petition should be filed directly to the official receiver, LED. This will reduce court procedures and expedite the process. At the moment the official receiver approves the debtor's petition, the debtor will become bankrupt and the time for automatic discharge will start to count. However, from my viewpoint, the petition needs to be filed with the Central Bankruptcy Court. Trust, reliability and neutrality are the most important aspects of any legal proceedings including those of bankruptcy. People still have faith in the Court. The Court is one of three main powers in governing the country and it is still free from the intervention of the legislation and the government. In addition, current court procedures are relatively fast, and efficient.

³⁸The Legal Execution Department., available at <http://www.led.go.th>. (last visited July 20, 2008).

3. Process for Becoming Bankrupt

First, the debtor files a petition with the Central Bankruptcy Court; the petition for personal bankruptcy shall clearly point out:

- a. The insolvency of the debtor;
- b. The list and addresses of the creditor(s) to whom the debtor is indebted for a total amount of not less than one million baht;
- c. A Statement of Affairs which includes details of debtor's income, assets, debts, and business dealings;
- d. Reasonable grounds; and
- e. An acknowledgement that the debtors, knows his or her rights, responsibilities and restrictions once he or she is under a bankruptcy order.

After the court accepts the petition, the court shall proceed with the inquiry immediately. The court shall publish the date and time of the inquiry in at least one widely circulated daily newspaper. The court shall proceed with the inquiry on the petition uninterruptedly without adjournment until the completion of the inquiry and an order is made except in the case of force majeure.

Upon inquiry into the petition, the court shall examine the facts as provided in the Eligibility requirement. If the facts are ascertained and there is a reasonable ground to declare the debtor a bankrupt and the debtor has filed the petition in good faith, the court shall issue a bankruptcy order. If the facts can not be ascertained or the debtor cannot prove that he or she is unable to pay all the debts or there are other grounds why the debtor should not be bankrupt, the court shall dismiss the petition.

When the court has accepted a petition for bankruptcy, before the court has issued a bankruptcy order, if one of the creditors makes an ex parte application as a motion and proves that the debtor has done any of the following acts:

- (1) Has left, or is about to leave the jurisdiction of the court, or did so previously, and remains outside the jurisdiction of the court, with intent to prevent or delay creditors from receiving repayment of debts;
- (2) Conceals, hides, transfers, sells, disposes of, or fraudulently removes assets, seals, accounting ledgers, or documents which will be helpful to the creditors as a whole in carrying on the jurisdiction of the court, or is about to do so;

(3) Has committed, or is about to commit fraud on the creditors, or has committed or is about to commit any offence under this Act.

Then the court is empowered to make any of the following orders:

(a) Require the official receiver to enter into any place of residence or business of the debtor, between the period of sunrise and sunset, to examine assets, seals, accounting ledgers, or documents of the debtor, and have the power to examine the debtor, or issue summons for the debtor's attendance, to examine the debtor.

(b). Require the debtor to provide security to the satisfaction of the court that the debtor will not abscond beyond the jurisdiction of the court, and will attend the court on each occasion the court the court may order. If the debtor cannot give security, the court is empowered to order his or her detention for a period of not more than one month on each occasion subject to a total period not exceeding six months.

(c) Issue a warrant for the arrest and detention of the debtor until the court adjudges him or her to be a bankrupt, or until the court dismisses the bankruptcy petition. Or until the debtor provides security to the satisfaction of the court.

If any cause arises justifying the amendment of an order passed under the previous paragraph, either in the opinion of the court or on the application of the debtor, the court is empowered to withdraw such order, or pass any other order as it may deem proper.

4. Court Fees and Related Expenses

In petitioning for bankruptcy, the debtor shall pay the court's fee of five thousand baht. The court may order the debtor to deposit an additional amount of money for the expenses as the court sees fit. The debtor does not have to pay the official receiver's fee. The official receiver in Thailand is a government officer who gets a monthly salary from the ministry of Finance.

5. Effects of Bankruptcy

The consequences of bankruptcy are similar to those when debtors are put under receivership orders. When the court issues a bankruptcy order, the official receiver only shall have the following powers: (1) to manage and dispose of the assets

of the debtor, or do 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. The official receiver shall join in all civil actions relating to the assets of the debtor which may be pending in court at the time when the court orders the debtor to be under a bankruptcy order. Also, when the official receiver applies by motion, the court is empowered to order the cessation of the hearing of the civil action, or make any other it may deem proper. With the bankruptcy order, it is prohibited for the bankrupt to do any act relating to his or her assets, or his or her business, except such act done by order or approval of the court or the official receiver. Also, a creditor may not institute a civil action relating to a debt for which he or she may claim payment under the Bankruptcy Act.

Nevertheless, the new amendment should add the following details to ensure the assistance from the bankrupt. Once the debtor is under the bankruptcy order, the debtor must cooperate with the official receiver in collecting and selling his or her assets and is responsible for all the court fees, damages and all related expenses in the bankruptcy case. To guarantee the liabilities in the case, the official receiver is empowered to request a security from the debtor as deemed fit. If the debtor does not assist the official receiver or does not deposit a satisfactory security within seven days after being informed, the official receiver will call a meeting of the creditors to select the plaintiff creditor as soon as possible.

From my standpoint, the debtor should not need to make any income contribution. The purpose of this new law is to free a debtor from his or her debts and give them a 'fresh start' economically. If the debtor has decided to declare himself or herself bankrupt by paying all of his or her creditors with all his or her available assets, that should be a sufficient penalty. Being labeled a bankrupt is harsh in itself. The law should allow the bankrupt to get back on his or her feet without any further obligation.

6. Discharge of Bankruptcy

The bankruptcy should not end too soon or too late. If the law frees the bankrupt too early, the debtor may create debts again because he or she has no fear of

the effect of bankruptcy since he or she will no longer be given this status within months or a year. The debtor may start to spend thoughtlessly or initiate new business projects without thorough studies. However, the status of being bankrupt should not last for a long time. After the official receiver sells all the bankrupt's assets, distributes all the earnings to the creditors and pays all the relevant fees, the debtor should be discharged. Needless to say, spending a period of time under bankruptcy should be part of the penalty for the debtor.

No matter what causes the bankruptcy, the bankrupt needs to think hard about the next time they want to do anything beyond themselves. By stating that, the honest bankrupt should be automatically discharged from bankruptcy three years from the date the court issues a bankruptcy order. If the bankrupt does not cooperate with the official receiver, his or her bankruptcy will be extended too five to five years. An order of discharge from bankruptcy relieves the bankrupt from liabilities for debts for which payment can then be claimed, except : (1) debts relating to taxes ; (2) debts which have arisen through the dishonesty or fraud of the bankrupt, or debts for which creditors have not filed claims owing to dishonesty or fraud to which the bankrupt is a party. The provisions of sections 77,81/1,81/2,81/3 and 81/4 of the present Bankruptcy Act must be applied mutatis mutandis in the new Chapter of proceedings for a voluntary debtor's petition.

7. Definition of Exempt Assets

According to section 109 of the Bankruptcy Act, the official receiver will not seize 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 livestock, seeds, instruments and items for use in the debtor's occupation, of a total value not exceeding one hundred thousand baht. The idea of exceeding the definition of exempt assets to include a house and a car of the bankrupt is not recommended. A house and/or a car are liquid assets of the bankrupt that can be seized and easily sold on the market. The distribution of the proceeds allows creditors to have some money in return for their loans to the debtor. The bankrupt needs to rent an apartment or a house for their dwelling at a rate they can afford. He or she has to use public transportation to travel in his or her daily life. With bankruptcy, the debtor cannot

have the same standard of living as before. Though going bankrupt is not purely the debtor's fault, neither is it the creditors or the rest of societies.

8. The Attitude of the General Public Towards the Bankrupt

The notion of being bankrupt is a stigma that has to change. Being a bankrupt does not mean that such person is not a decent citizen. Insolvency can happen from many unexpected causes which may be unpreventable. Any honest person who is insolvent deserves to have a second chance to recover from all of his or her debts and begin a fresh start. The Constitution of Thailand in any regime respects the dignity of a person, the general public as citizens of this country have to show the same level of respect to the bankrupts as they show to non-bankrupt persons.

9. The Effect on the Employment of the Bankrupt

Those who work as government officials or work in state-run organizations should not have to lose their jobs because they are bankrupt. They should be able to work in the same position. However, those who work in financial divisions or related segments must be relocated to other positions as a precaution. Allowing a bankrupt to work at the same workplace will enhance the chance for him or her to have a new life. If they have to resign, nobody gets anything. The bankrupts lose their steady income and have to find new careers which will take some time. Also, their family will encounter more financial troubles as a result.

Chapter 4

Analysis of the Problem

A. Problem of Applying Voluntary Bankruptcy for Individual Debtor in Thailand

This can be divided into the issues as follow:

1. Though it is not Permit the Right to the Individual Debtors, those Debtors Still Try to Find other Ways

It can be said that without the permission of rights, the individual debtors can request to be bankrupted. Those who try to find the way to ask for being bankrupted thus, for the benefit from freeing from the debt by other method such as build the creditor and fake debt to submit and sue the debtor themselves to the process of bankrupted. Therefore it can be seen that, though the law has not left an opportunity for the right of the debtor but the debtor try to find the way to bring themselves to the bankrupted process. On the other hands, the law shall provide the right for the debtor but it should has a filtering process and control the debtor who asked for the balance of the debtors benefit as well as the creditors.

2. The Currently of the Bankruptcy Law of Thailand Forced the Debtor to Act Dishonestly

When an individual honest but unlucky debtors see that they should be an ordinary individual because their insolvent debt, the debtor then aims to go through the bankrupted process. But whenever the law has not open the door for them to get into the bankrupted process, the debtor who has those aims may decide to take risk by act corruptly on creating the fake creditor and the debt to be a puppet to sue themselves for being bankrupted. Thus, the law squeezed individuals to unnecessary cross the law, it is an unacceptable case. If we look from the different corner, it can be seen that the law support no choice for people and force them to the bad ways.

3. The Currently of the Bankruptcy Law of Thailand which is not Giving the Right to the Individual Debtor to ask for themselves to become Bankrupted is the Limited of their Basic Right to Choose their Ways of Life

The constitution of the Kingdom of Thailand has guaranteed and preserved the basic rights of the population to choose for their own ways of living, if the rights were used not over than they have³⁹. However, the financial status of any individual, they will get to know well by themselves. As when the individual debtor finds themselves with the insolvent debt and decided that they should go through the bankrupted process but the law has not give them the right as a choice. Therefore, though the honestly but unlucky debtor see that they should go through the bankrupted process and suite to receive an opportunity to begin the new life but they have no choice and the opportunity to show their honest. The opportunity to discharge from the debt is limited under the process of discharge from bankrupted by them. The establishing of bankruptcy law by not permit the right to be a choice to get into the bankrupted process is opposing the constitution.

4. The Currently of the Bankruptcy Law of Thailand which is not Giving the Right to the Individual Debtor to ask for themselves to become Bankrupted is Object to the Cross-Border Insolvency “Collective Measure” and the Main Theory “Pari Passu”

As the law has not provide the right to the individual debtor to be bankrupted as their will and gain the benefit from the bankrupted process such as the process of the debt pay rest and the automatic withdrawal from being bankrupted. On the other hands, the given of no permission for the right of the debtor result to some promptly creditor that may steal an opportunity by take Legal Execution on the debtor's property before other the creditors that are not ready. To be able to receive the most paid debt from the property of the debtor is object to the idea of bankruptcy law which stated that the collecting of property of the debtor under the bankrupted process is for the benefits of the creditors. To let them all received the payment of

³⁹Constitution of the Kingdom of Thailand B.E.2550 (2007), Section 28.

debt from the debtor property together. Thus, the debt according to the Civil and Commercial Code and the Legal Execution under the law case processing of the civil case is not open the room to other the creditors to have an opportunity to submit the request to pay the debt to share the debt payment.

5. Creditor Took Advantages on the Debtor by using Time Expanding in the Legal Execution.

In general, the civil case has prescription around 10 years and period for civil legal execution after the court has judged debtor to loss in case can took another 10 years. The creditor may intend to let the debt interest continuing increase and use benefit of the extension of this prescription.

Generally, the objective of prescription by the law need creditor to sue the case or force the right at least in the case period but most of the creditor try use that right as much as they have and intend to let the debt interest continuing increase and use benefit of the extension of this prescription. For example, The prescription of civil case is 10 years and when it was almost 10 years the creditor will file the case to stop the time bar and the period for civil legal execution after the court made a judgment can took another 10 years and after that creditor can extend the time by suing the bankruptcy case and extend for another 3 years for example.

a. To be Consistent with the International Bankruptcy Law

The types of the investment in present have not been limited only to the investment the country but also expand to the investment between countries. Therefore, the investor has property in the country that the invested, if the investor aims to go through the process of bankruptcy by their wills, it may cause the problem in the force to collect the group of the debtors' property. The reason is that some countries are not allowing the debtor to go through the bankrupted process on their wills. Under the concept of bankruptcy law between countries, most of the country open an opportunity for the debtor to ask for being bankrupted under some conditions and required the government staff to play the role of property groups collecting and cooperate between countries. Therefore, as Thailand has establish the law by no right allowing to the debtor to ask for being bankrupted is the obstacle to apply the

bankruptcy law between countries. The law establishment by providing the debtors' right results in the idea of universal bankruptcy law that shows forgiveness to the debtors.

b. Analysis the Problem unless the Voluntary Bankruptcy is being Applied

The reasons behind this argument stem from the present Bankruptcy Law in Thailand. According to Thai Bankruptcy Act B.E. 2483 (A.D.1940), any debtor who is faced with financial difficulties cannot file a petition for bankruptcy. Instead, he or she has to wait for a creditor or creditors to file a bankruptcy petition against him or her. Since the current Bankruptcy Law leaves the debtors and their enterprises with no other alternatives. Debtors do not have many options to avoid bankruptcy. So, debtors will conceal their accessible assets or choose not to work because they don't want to repay their creditors. Moreover, as the law give no rights to the individual debtor to ask for being bankrupted which is not consistent with Cross-Border insolvency, which will results to the decision of the foreign investors which made some of the foreign investors don't want to invest in Thailand.

B. Problem about the Application of Voluntary Bankruptcy for Individual Debtor in Thailand

After studying the laws concerning the voluntary bankruptcy for individual debtors in the United States and United Kingdom, it can be seen that United State's bankruptcy law has been used as the model law in the field of bankruptcy and it is widely accepted and adopted in several countries including Canada and Japan. Therefore, it should also be the most appropriate model law for Thailand. In this regard, Thailand should adopt the details concerning voluntary bankruptcy from US bankruptcy law into the current Thai bankruptcy law. However, In Thailand, if the legislators do not set a minimum debt for bankruptcy filing, there will be a caseload problem. The debtors who owe little money due to their recklessness with money or overuse of their credit cards will all apply for bankruptcy. Therefore, I suggest that the

law should set a minimum amount of debts the debtor owes; the debtor must be insolvent and indebted to one or several creditors amounting to not less than one million baht. The new section that will be added into the current Thai bankruptcy law is section 9/1 “The debtor who is a natural person may file a bankruptcy petition according to this chapter”. To lessen the numbers of sections for new enactment, there needs to be a statement in this new chapter that if any part of the proceedings is not specifically provided in the chapter, the provisions in other chapters of the present Act shall apply *mutatis mutandis*.

Since this will be a new enactment, the Ministry of Justice, the Central Bankruptcy Court and other organizations involved in this process such as the Legal Execution Department have to make every effort to make the general public understand the details of the new law.



Chapter 5

Conclusion and Recommendation

A. Conclusion

The bankruptcy law first appeared in Roman times. In that time, the Roman society was not so complex. The communication in the community is only the exchange of goods or it can be said that the buying and selling system are only the exchange of one for one. Therefore, in the first period of Roman society there is no law of bankruptcy as there is no need to have one. After that when the economic situation had developed and expanded wider, and then it causes the law of contract. There was the default in the business society circle, the debtor then have to be responsible for the breach of contract and default by their bodies and life for example, debtors had to be the slave to pay for debt, imprison or depose. When the economics and society developed, there are more buy and sell in the society. It was the case that debtor were forced to pay the debts and if there is a default they will be taken to be a slave or executed or tortured which result in the confusion in the society. This was the cause to pass the bankruptcy law to do apply with the default of the debtor. The idea of bankruptcy law in the early age aimed at gathering most of the debtors' asset in order to pay all to the creditor early and if any of the debtors has seized all the assets to pay for the debt, the debtor will has no assets left. Even, the asset that is the tool to work until all the debt had been paid. These debtors were like the people who died from the commercial or economic system as they could not carry out any work, they were dead in the civil aspect.

Comparing to England, The act against such persons as they were bankrupt was introduced In A.D.1542. This regulation could be used only against merchant and it was only used on involuntary basis. In A.D.1705, there was a new regulation in discharge system under the thoughtful of forgiveness principle. With the condition that debtor would get a return of 5% of the total value of his/her asset. The reason is to compensate debtors for cooperating in revealing their assets. This provision of law made debtor to take part in the problem and give benefits to both creditor and debtor.

However, prosecuting at this time, allowed only creditors to file a bankruptcy case against debtor (Involuntary insolvency). In A.D.1844, the system of voluntary insolvency was firstly introduced in England but only when the debtors who were merchants. Later in A.D.1861, there was a big change in condition from merchant only to cover all people. Then, the insolvency law in UK was developed continually to allow debtor to participate in procedure to show their honesty by revealing information and collecting their assets to pay the debt to all creditors as much as possible and as soon as possible. Later in A.D.1914 England has enacted a new law "The Bankruptcy Act 1914" and "Deeds of Arrangement Act 1914" which gave alternative ways for debtors to avoid bankruptcy. This was an allowance to give right to debtor it was an alternative way for debtor to live their life. Moreover, it gave debtor a chance to negotiate the amount of debt before becoming bankrupt. Finally in A.D.1986 the laws about liquidation and personal insolvency were combined in to "The Insolvency Act 1986" and there were still provisions allowing voluntary bankruptcy.

The bankruptcy law of The United States of America was based on the example of insolvency law of England. In A.D.1800, the Congress under the provision of constitution issued the first bankruptcy law. At that time, the country faced financial crisis because people try to speculate on immovable property. In A.D.1841, the congress of US federal government had established the new bankruptcy law to use as a second one for the economic crisis began in A.D.1837. This law was initiated to help debtor with no limit to only the merchant or the commercial that can go through the process of bankrupt and they can use the benefit to began the new life in a "Fresh Start". Moreover, the law allowed the debtors to submit the request as they could start in the bankrupt process for the benefit of debt release (Voluntary Bankruptcy). But, this is on the condition that there should be the vote of agreeing from creditor committee more than a half. However, this law was applied only for 18 months and it was repealed in A.D.1843. However, it point of that there a channel for the debtor to ask for being bankrupt by themselves which was another step of the idea development in the bankruptcy law. The bankruptcy law of The United States of America was amended twice in A.D.1898 and A.D.1934 and still permitted personal debtors to petition bankruptcy for him/herself under the agreement of all creditors. Later in

A.D.1970, many businesses collapsed, therefore bankruptcy law and composition of debt were in need. The new bankruptcy law (Bankruptcy Act 1978) which was effective on the 1st October 1978 allowed debtors to be discharged from bankruptcy automatically if debtors did not petition for bankruptcy dishonestly. However, this action was under the condition of checking dishonesty of trustee and creditors, who could check and object the dishonest debtors.

Comparing to bankruptcy in Thailand, It firstly appeared in the early Rattanakosin period. The new bankruptcy law, Loan Act B.E.2434, which allowed insolvent debtor who was individual persons to have the right to petition the court to designate receiver office for repay debt. It opened a chance for debtor to petition bankruptcy voluntarily according to international bankruptcy law. However, this law allowed only a debtor to petition for bankruptcy by him/herself, but creditor had no right to sue debtor for bankruptcy. This provision of law created many problems in debt payment system and credit system in Siam. Nevertheless, this law was in use for only 17 years and in B.E.2457 RamaVI had reformed the bankruptcy law by cancelling bankruptcy law chapter B.E.2434 and enacted provision of bankruptcy act B.E.2451 instead and cancelled the right for debtor to petition him/herself bankrupt. After the year B.E.2451, the bankruptcy law was amended several times until B.E.2483 the Bankruptcy Act B.E.2483 was enacted and allowed only juristic persons to petition for liquidation to make him/herself bankrupt under section88 and Civil and Commercial Code section1266. Even though, the Bankruptcy Act B.E.2483 was revised and added for 7 times but still never give right to individual debtor to petition for bankrupt. It has only the case that liquidation of juristic person debtor petition for bankruptcy according to section88. According to Bankruptcy Act B.E.2483, this bankruptcy law and its revision until now have still not given individual debtor to petition for bankrupt. This is to give advantage to creditor to be repaid most. Though the bankruptcy law in Thailand gives a chance for debtor to enter into "Automatic Discharge"&"Fresh Start" system. However, it still obstruct debtor to enter bankruptcy process easily.

If we look at the history of international and Thai bankruptcy law, we can see that bankruptcy law has been changed very often to meet the requirements of economics and society in different periods of time. The law was enacted and applied

to give more advantages to creditors, for example, criminal provision of crime against a debtor who petition for bankruptcy dishonestly and the early bankruptcy law regulated the punishment for debtor who could not pay or manage his/her debt by punishment for example, capital punishment, tortures, imprisonment or even slavery to get money to pay the creditor. This is a point that bankruptcy law in early period of each society and country gave more privileges to creditors rather than debtors. We can see that there was a development in the form of motivation to persuade a debtor to take part in voluntary bankruptcy system. This gave advantages from the cooperation of debtor as the debtor took part in collecting assets for selling so debtor could repay to creditor. This makes the creditor to be able to repay more.

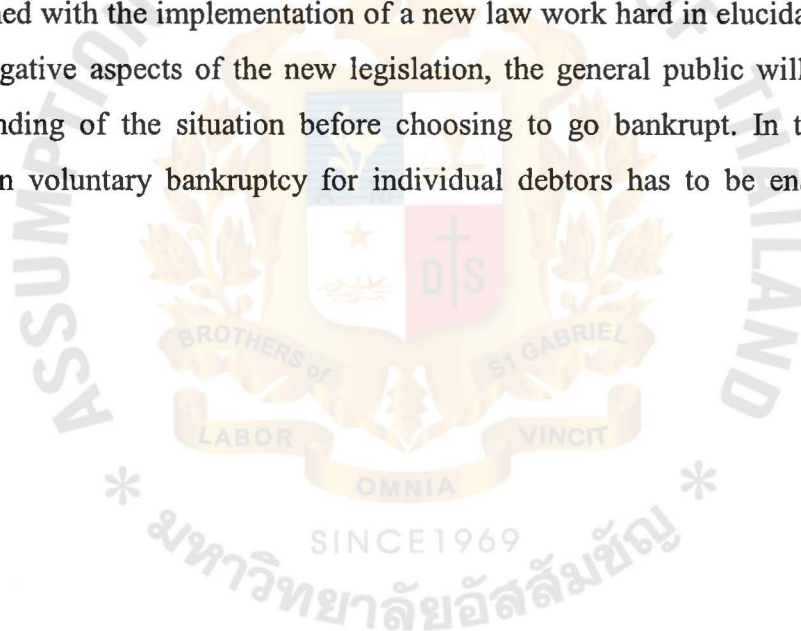
The proponents of the voluntary bankruptcy system suggest that an honest debtor should have a chance to begin a "new life". A financial problem that a debtor has may be not the produce of his/her mismanagement or dishonesty it could arise from uncontrolled situation such as an increase in the oil price, natural disasters or sudden changes of government all these can cause financial crises. Therefore, every honest debtor should have a chance to restart his or her life and business. The economic development will not affect by this amendment because the present Bankruptcy Law leaves no other choice to debtor and his or her company. Debtor does not have many options to avoid bankruptcy. Therefore, most of the time debtor tries to hide his or her accessible assets or choose not to work because most of his or her salary or any kind of compensations will be embellished to repay his or her creditors. No one benefits from these circumstances, so debtor should pay all his or her debts with all the assets that he or she has. Both creditors and debtor can get benefit by voluntary bankruptcy. If the debtor cannot afford all his or her liabilities, either debtor be sued for bankruptcy by creditors or debtor declares himself or herself bankrupt, the creditors will receive the shares equally the same. Using this scheme, the debtors will be more willing to cooperate with the creditors to gather their assets and they will be discharged from bankruptcy after a certain amount of time if the debtors help the official receiver and behave as an honest debtor. This benefits the debtors although they may lose all their obliged assets, but they will be free from all their financial obligations and start a new life. As benefit to society as a whole, the discharged debtor will again become more active and efficient member of society and

working towards its progress and development. The philosophy of the market-driven economy together with voluntary bankruptcy encourage people to do business. This encourage competition among businessmen to manage all limited resources to the greatest degree, as a result, new technology, product and services are grown up to ease the daily life of the citizen of the country. Moreover Thai people have to prepare themselves for fierce competition from abroad as a result of free trade. And in supporting people to take risks in doing business, bankruptcy law have to play a part as a safety net by enacting a voluntary bankruptcy amendment.

B. Recommendation

Nowadays, the investment is not limited only to each society or countries but it extends across the countries in the world of no boundary. Thus, when there is an investment, it normal to be loss which may take the investors into the situation of insolvent debt. Therefore, the idea of bankrupted across country or Cross-Border Insolvency has arisen and there is a flow of extension in the cooperating level and organization between countries. When the world stage has established the policy and drafted the agreement between countries in the topic of across countries bankruptcy. The bankruptcy law enforcement yet has the limitations and obstacles especially the internal bankruptcy law of each country that has nonconformity content. One of them had given the rights to the individual debtors to ask for being bankrupted as their wills which is the start point of the bankrupted process. Bankruptcy law is an economical law which is a tool to control the driving of the country's economic especially, for controlling the release of credit which motivates the consumption. Therefore, the allowance of the debtor rights to ask for themselves to be bankrupted will results directly to country economic. The purpose of UNCITRAL model law on cross-border insolvency is to provide effective mechanisms for dealing with cases of cross-border insolvency cases involving debtors, assets, claimants and other parties in interest involving more than one country. The author suggest that UNCITRAL model law on cross-border insolvency will be the best law that Thailand should follow in order to make Thailand bankruptcy law become world wide accepted.

With the developing economy and free trade era, a voluntary bankruptcy law for individual debtor has been introduced in Thailand. A debtor's insolvency may be arisen because of many unexpected reasons and influences and an honest citizen has the right to a fresh start. A new amendment will create more alternatives for those in financial crises by erasing the stalemate that exists as a consequence of the present Bankruptcy Act. The debtor by himself or herself could have a new life and start his or her business after three years of bankruptcy. Having a well-designed law that has been adjusted to Thai culture and people, this amendment will ease all the concerns of the people who are against this system. Strong enforcement of the penalties for any violation of the Act and a more energetic participation of an official receiver will boost the success of the new proposal. Finally, if the government and organizations directly concerned with the implementation of a new law work hard in elucidating the positive and negative aspects of the new legislation, the general public will have a better understanding of the situation before choosing to go bankrupt. In the final analysis, law on voluntary bankruptcy for individual debtors has to be enacted in Thailand.



Bibliography

Books

- Henry Campbell. Black's Law Dictionary. 8th ed. United States: West Publishing Co., 2007.
- Pichai Ninthongkum. How to sue Bankruptcy. Bangkok: Athataya Millennium, 2001.
- Steven A Frieze. Handbook of Bankruptcy and Personal Insolvency. 6th ed. London : FT Law & Tax, 1996.
- Sutee Supranit. Bankruptcy and Rehabilitation. 3rd ed. Bangkok: Winyuchon Publishing, 2004.
- Wicha Mahakhun. The commentary on Bankruptcy Law (perfect edition). 8th ed. Bangkok: Nitibunakarn Publishing, 2001.

Periodical Materials and Journal

- Kanok Jullamon. The Proposal of Voluntary Bankruptcy for individual debtors in Thailand. Dulapata Law Journal (January-August 1998): 126.
- Sawanun Suwangota. Draft UNCITRAL Model Law on Cross-Border Insolvency. Dulapata Law Journal (January-June 1998): 20-30.

Law, Regulation and Statute

- Bankruptcy Act B.E.2483 (A.D. 1940).
- The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- The Constitution of the Kingdom of Thailand B.E.2550 (2007).
- The Insolvency Act 1986 of the United Kingdom.

Internet

- A Brief History of Bankruptcy. available at <http://www.bankruptcydata.com/ch11history.htm/>. (last visited 10 July 2008).
- A Summary from Administrative Office of the United States Courts. available at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html>. (last visited 20 July 2008).

A Summary from The Insolvency Service, Guide to Bankrupt. available at <http://www.insolvency.gov.uk/guidanceleaflets/guidetobankruptcy/guidetobankruptcy.htm> 1.(last visited 20 July 2008).

Bankruptcy An Overview. available at <http://topics.law.cornell.edu/wex/Bankruptcy>. (last visited 2 June 2008).

Draft Legislative Guide on Insolvency Law. available at <http://www.uncitral.org/uncitral/en/commission/sessions/37th.html>. (last visited 12 July 2008).

Know some Benefits of Bankruptcy. available at <http://www.buzzle.com/editorials/10-15-2005-78969.asp>. (last visited 2 June 2008).

The History of Bankruptcy. available at http://www.attorneybankruptcy.net/bankruptcy_history.cfm/. (last visited 10 July 2008).

The History of Pre-Medieval Bankruptcy. available at <http://cominganarchy.com/2008/05/11/the-history-of-pre-medieval-bankruptcy/>.(last visited 10 July 2008).

The Legal Execution Department. available at <http://www.led.go.th>. (last visited 26 July 2008).



