

รายการอ้างอิง

ภาษาไทย

- กฤษดา พุ่งโชคชัย. หลักการเสมือนเป็นเจ้าของ. วิทยานิพนธ์ ปริญญาโทมหาบัณฑิต สาขา นิติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2539.
- กิติพงศ์ อรุณีพัฒน์พงศ์. กระบวนการพิจารณาคดีล้มละลายเริ่มต้นจนเสร็จสิ้นกระบวนการ (ตอนที่ 3). การเงินธนาคาร 18 (กรกฎาคม 2542): 124.
- กิติพงศ์ อรุณีพัฒน์พงศ์. ข้อเสนอการแก้ไขกฎหมายล้มละลายฉบับใหม่. การเงินธนาคาร 20 (กันยายน 2542): 142.
- กิติพงศ์ อรุณีพัฒน์พงศ์. ทางเลือกของเจ้าหนี้ควรฟ้องคดีแพ่งหรือคดีล้มละลาย. การเงินธนาคาร 18 (พฤษภาคม 2542): 140.
- ไกรสร บารมีอวยชัย. แผนฟื้นฟูกิจการของลูกหนี้ซึ่งที่ประชุมเจ้าหนี้มีมติยอมรับแล้วจะมีการแก้ไข ในชั้นพิจารณาของศาลได้หรือไม่. ใน รพี'43, หน้า 14-15. กรุงเทพฯ: คณะนิติศาสตร์ มหาวิทยาลัยอัสสัมชัญ, 2543.
- ข่าวการเงินธนาคาร. วิพากษ์กฎหมายล้มละลายโหดเกินสากล. การเงินธนาคาร 17 (ธันวาคม 2541): 38.
- จรัญ ภักดีธนากุล. กฎหมายฟื้นฟูกิจการ: บทบาทของศาลในการฟื้นฟูกิจการ. ใน รพี'43, หน้า 10. กรุงเทพฯ: คณะนิติศาสตร์ มหาวิทยาลัยอัสสัมชัญ, 2543.
- จิรัฏฐ์ การประเสริฐกิจ. กระบวนการประนอมหนี้ก่อนล้มละลายตามกฎหมายล้มละลายของ ไทย. วิทยานิพนธ์ ปริญญาโทมหาบัณฑิต สาขานิติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2545.
- ชาย กิตกคุณาภรณ์. ประสบการณ์แก้ปัญหาทางการเงิน. กรุงเทพมหานคร: ส. เอเชียเพรส (1989), 2542.
- ชัยณรงค์ เหลือวิสัย. มาตรการฟื้นฟูลูกหนี้ที่มีกิจการขนาดเล็กภายใต้กฎหมายล้มละลาย. วิทยานิพนธ์ ปริญญาโทมหาบัณฑิต สาขานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์ มหาวิทยาลัย, 2542.
- ฐานิศร เดชธำรง และคณะ. วิกฤตการณ์เศรษฐกิจการเงินของประเทศไทยและแนวทางแก้ไข ปัญหา 2540-2545: บทบาทแบะหน้าที่ขององค์กรเพื่อการปฏิรูประบบสถาบันการเงิน กรุงเทพฯ: องค์กรเพื่อการปฏิรูประบบสถาบันการเงิน, 2545.

- ถนอมนวล เชื้อบุญชัย. การฟื้นฟูองค์การธุรกิจที่ประสบปัญหาทางการเงิน. วิทยานิพนธ์ ปริญญา
มหาบัณฑิต สาขานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2532.
- ทำนอง ดาศรี และนกุล โกสลาทิพย์. สิทธิประโยชน์การปรับปรุงโครงสร้างหนี้. พิมพ์ครั้งที่ 2.
กรุงเทพมหานคร: ธนาकारแห่งประเทศไทย, 2543.
- ธีระพล อรุณะกสิกร ปฏินันท์ สันติเมทนีดล สถาพร ลัมมณี ไพฑูรย์ นาคจำ และสุริยกานต์ ชัย
เนตร. พระราชบัญญัติล้มละลาย พุทธศักราช 2483 แก้ไขเพิ่มเติม พ.ศ. 2542.
กรุงเทพมหานคร: วิญญูชน, 2543.
- นันทวัฒน์ บรมานันท์. กฎหมายเศรษฐกิจในยุควิกฤติเศรษฐกิจ. ใน แนวทางการแก้ไขปัญหา
เศรษฐกิจ-การเมืองไทย, หน้า 71-72. กรุงเทพฯ: สุขุมและบุตร, 2543.
- ประจักษ์ พุทธสมบัติ. กฎหมายล้มละลาย (ฉบับที่ 5) พ.ศ. 2542 (ฉบับเจ้าปัญหา). ใน รวมบทความ
ความในโอกาสครบรอบ 72 ปี ศาสตราจารย์ ดร.ปรีดี เภษมทรัพย์, หน้า 22. กรุงเทพฯ:
เดือนตุลาคม, 2543.
- ปรีชา พานิชวงศ์. คำอธิบายกฎหมายล้มละลาย. กรุงเทพฯ: นิติบรรณการ, 2540.
- มนตรี ศรีไพศาล. ร่วมกันคิดแก้ปัญหาเศรษฐกิจไทย. กรุงเทพฯ: ซีเอ็ดยูเคชั่น, 2542.
- มนตรี ศิลปมหาบัณฑิต. มาตรการช่วยเหลือลูกหนี้ตามกฎหมายล้มละลายของสหรัฐอเมริกา.
ดูพาท 46 (มกราคม-มิถุนายน 2542): 32-37.
- มิ่งสรรพ์ ขาวสอาด และคณะ. ผลกระทบของวิกฤติเศรษฐกิจต่อชนบทไทย. กรุงเทพฯ: สถาบันวิจัย
เพื่อการพัฒนาประเทศไทย (TDRI), 2543.
- รังสรรค์ ธนะพรพันธุ์. เศรษฐกิจไทยหลังวิกฤติการณ์ปี 2540. กรุงเทพฯ: โครงการจัดพิมพ์คบไฟ,
2545.
- วรวิทย์ ฤทธิพิศ. การฟื้นฟูกิจการของลูกหนี้: หลักเกณฑ์และแนวทางปฏิบัติ. กรุงเทพมหานคร:
นิติธรรม, 2543.
- วารภรณ์ อาษาพร. กฎหมายว่าด้วยการช่วยเหลือกิจการในต่างประเทศ. วารสารกฎหมาย 18
(กันยายน 2541): 1-4.
- วารภรณ์ อาษาพร. แนวคิดทางกฎหมายในการฟื้นฟูกิจการของลูกหนี้: ศีรษะร่างพระราชบัญญัติ
ล้มละลาย (ฉบับที่...) พ.ศ.... วิทยานิพนธ์ ปริญญามหาบัณฑิต สาขานิติศาสตร์ บัณฑิต
วิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2539.
- วิชา มหาคุณ. กฎหมายล้มละลายฉบับสมบูรณ์. พิมพ์ครั้งที่ 6. กรุงเทพฯ: นิติบรรณการ, 2541.
- วิชา มหาคุณ. การวิเคราะห์กฎหมายฟื้นฟูกิจการของไทย. วารสารกฎหมาย 18 (กันยายน 2541):
18-22.

- วิรัตน์ แสงทองคำ. โรคโลกาภิวัตน์(หมายเหตุธุรกิจ). กรุงเทพมหานคร: พี. เพรส, 2541.
- วิศิษฐ์ วิศิษฐ์สรอรรถ. กฎหมายฟื้นฟูกิจการ. กรุงเทพฯ: บริษัทวิศิษฐ์สรอรรถ (ฝ่ายการพิมพ์), 2543.
- วิศิษฐ์ วิศิษฐ์สรอรรถ. ข้อสังเกตบางประการต่อความสามารถของบุคคลล้มละลาย. ใน รพี'43, หน้า 8. กรุงเทพฯ: คณะนิติศาสตร์ มหาวิทยาลัยอัสสัมชัญ, 2543.
- วิศิษฐ์ วิศิษฐ์สรอรรถ. ฟื้นฟูหนี้. ประชาชาติธุรกิจ (30 กรกฎาคม-2 สิงหาคม 2541): 12.
- สถาบันนโยบายสังคมและเศรษฐกิจ. กฎหมายฟื้นฟูเศรษฐกิจกับอนาคตของประเทศ. กรุงเทพฯ: ร่วมด้วยช่วยกัน, 2542.
- สถาบันนโยบายศึกษา. แนวทางการแก้ไขปัญหาเศรษฐกิจ-การเมืองไทย. กรุงเทพฯ: สุขุมและบุตร, 2543.
- สหพันธ์ไร่นาใจตร. การช่วยเหลือกิจการของบริษัทลูกหนี้โดยการขอ Administration Order ตามกฎหมายอังกฤษ. ใน รวมบทความในโอกาสครบรอบ 60 ปี ดร.ปรีดี เภษมทรัพย์, หน้า 117-122. กรุงเทพฯ: พี.เค.พรินติ้งเฮ้าส์, 2531.
- สิทธิชัย สถาพรธนพัฒน์. คู่มือมนุษย์(ตกงาน). กรุงเทพมหานคร: มติชน, 2541.
- สุธีร์ ศุภนิตย์. หลักกฎหมายล้มละลายและการฟื้นฟูกิจการ. พิมพ์ครั้งที่ 2. กรุงเทพมหานคร: วิญญูชน, 2542.
- สุวินัย ภรณาลัย และคณะ. เศรษฐกิจไทยตายแล้วฟื้น. กรุงเทพฯ: แวนควิช, 2540.
- อัจฉรา ประจันนวล. ปัญหาความล่าช้าในการดำเนินกระบวนการพิจารณาคดีล้มละลาย. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต สาขานิติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2540.

ภาษาอังกฤษ

- Bankruptcy Code, Rules and Forms 1997 Edition. St. Paul, Minn: West pub. co., 1997.
- Berry, C., Bailey, E., and Schaw-Miller, S. Personal Insolvency: Law and Practice. London: Butterworths, 1993.
- Couke, P.J., and Oughton, D.W. The Common Law of Obligation. London: Butterworths, 1989.
- Doyle, L.G. Insolvency Litigation. London: Sweet & Maxwell, 1999.
- Epstein, D.G. Bankruptcy and Other Debtor – Creditor Laws. United state: West Publishing Co., 1995.

- Epstein, D.G. Debtor-Creditor Law in a Nutshell. United state: West Publishing Co., 1991.
- Fletcher, I.F. Law of Bankruptcy. London: Richard Clay, 1978.
- Jackson, T.H. The Logic and Limits of Bankruptcy Law. London: Harvard University Press, 1986.
- Rajak, H. Insolvency Law: Theory & Practice. London: Sweet & Maxwell, 1993.
- McQueen, J. Bankruptcy Law in England, Wales and Northern Ireland as Applied to Sole Traders and Individuals. The Reality and the Law, pp. 102-106. London: Sweet & Maxwell, 1999.
- Redmond, P., and Dawson, W. Bankruptcy Law. London: Macdonald & Evaw, 1967.
- Reynolds, R.W. Bankruptcy Guide. United State: North Carolina Bar Association, 1988.
- Strauss, S.D. Ask a Lawyer Debt and Bankruptcy. United State: W.W. Norton & Company, 1998.
- Thompsoh, J.H. the Principles of Bankruptcy Law. London: HFL, 1972.
- Tolmie, F. Introduction to Corporate and Personal Insolvency Law. London: Sweet & Maxwell, 1998.

ภาคผนวก

ผนวก ก

UNITED STATES CODE
Title 11 (Bankruptcy Code)



CHAPTER 13

ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I - OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec. 1301. - Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless -

- (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or
- (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that -

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action

Sec. 1302. - Trustee

(a) If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as a trustee in the case.

(b) The trustee shall -

- (1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;
- (2) appear and be heard at any hearing that concerns -
 - (A) the value of property subject to a lien;
 - (B) confirmation of a plan; or
 - (C) modification of the plan after confirmation;
- (3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;
- (4) advise, other than on legal matters, and assist the debtor in performance under the plan; and
- (5) ensure that the debtor commences making timely payments under section 1326 of this title.

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title

Sec. 1303. - Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title

Sec. 1304. - Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(8) of this title

Sec. 1305. - Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor -

- (1) for taxes that become payable to a governmental unit while the case is pending; or
- (2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained

Sec. 1306. - Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title -

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate

Sec. 1307. - Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including -

(1) unreasonable delay by the debtor that is prejudicial to creditors;

- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521.

(d) Except as provided in subsection (e) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

(e) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter

SUBCHAPTER II - THE PLAN

Sec. 1321. - Filing of plan

The debtor shall file a plan.

Sec. 1322. - Contents of plan

(a) The plan shall -

- (1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;
- (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and
- (3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

(b) Subject to subsections (a) and (c) of this section, the plan may -

- (1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;
- (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;
- (3) provide for the curing or waiving of any default;
- (4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

- (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;
 - (6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;
 - (7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
 - (8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;
 - (9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and
 - (10) include any other appropriate provision not inconsistent with this title.
- (c) Notwithstanding subsection (b) (2) and applicable nonbankruptcy law -
- (1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and
 - (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a) (5) of this title.
- (d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.
- (e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary

to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law

Sec. 1323. - Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection

Sec. 1324. - Confirmation hearing

After notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan

Sec. 1325. - Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if -

- (1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;
- (2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter I of this title on such date;
- (5) with respect to each allowed secured claim provided for by the plan -
 - (A) the holder of such claim has accepted the plan;

- (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
 - (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or
 - (C) the debtor surrenders the property securing such claim to such holder; and
- (6) the debtor will be able to make all payments under the plan and to comply with the plan.
- (b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan -
- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
 - (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.
- (2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended -
- (A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d) (3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d) (4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee

Sec. 1326. - Payments

(a) (1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid -

(1) any unpaid claim of the kind specified in section 507(a) (1) of this title; and

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e) (1) (B) of title 28.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan

Sec. 1327. - Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan

Sec. 1328. - Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt -

- (1) provided for under section 1322(b) (5) of this title;
- (2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or
- (3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if -

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt -

- (1) provided for under section 1322(b) (5) of this title; or
- (2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if -

- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted

Sec. 1329. - Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to -

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments; or
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

(b) (1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

- (2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time

Sec. 1330. - Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1307 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1329 of this title

แผนก ๗

The Insolvency Act 1986

THE SECOND GROUP OF PARTS

INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENT

Moratorium for insolvent debtor

Section 252. Interim order of court

- (1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.
- (2) An interim order has the effect that, during the period for which it is in force;
 - (a) no bankruptcy petition relating to the debtor may be presented or proceeded with, and
 - (b) no other proceedings, and no execution or other legal process, may be commenced or continued against the debtor or his property except with the leave of the court.

Section 253. Application for interim order

- (1) Application to the court for an interim order may be made where the debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as "voluntary arrangement").

- (2) The proposal must provide for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.
- (3) Subject as follows, the application may be made;
 - (a) If the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and
 - (b) In any other case, by the debtor.
- (4) An application shall not be made under subsection (3)(a) unless the debtor has given notice of his proposal (that is, the proposal to his creditors for the voluntary arrangement) to the official receiver and, if there is one, the trustee of his estate.
- (5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

Section 254. Effect of application

- (1) At any time when an application under section 253 for an interim order is pending, the court may stay any action, execution or other legal process against the property or person of the debtor.
- (2) Any court which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

Section 255. Cases in which interim order can be made

- (1) The court shall not make an interim order on an application under section 253 unless it is satisfied;

- (a) That the debtor intends to make such a proposal as is mentioned in that section;
 - (b) That on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;
 - (c) That no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and
 - (d) that the nominee under the debtor's proposal to his creditors is a person who is for the time being qualified to act as an insolvency practitioner in relation to the debtor, and is willing to act in relation to the proposal.
- (2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.
 - (3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.
 - (4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provisions in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.
 - (5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that provision is unlikely to result in any significant diminution in, or the value of, the debtor's estate for the purposes of the bankruptcy.

Subject to the following provisions of this Part, an interim order made on application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

Section 256. Nominee's report on debtor's proposal

- (1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating;
 - (a) Whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and;
 - (b) If in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee;
 - (a) A document setting out the terms of the voluntary arrangement which the debtor is proposing, and
 - (b) A statement of his affairs containing;
 - (i) Such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
 - (ii) Such other information as may be prescribed.
- (3) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, do one or both of the following namely;
 - (a) Direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the debtor;

- (b) Direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.
- (4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.
- (5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.
- (6) The court may discharge the interim order if it is satisfied, on the application of the nominee;
- (a) That the debtor has failed to comply with his obligations under section (2), or
- (b) That for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Section 257. Summoning of creditors' meeting

- (1) Where it has been reported to the court under section 256 that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under section 256 (3) (a) shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.
- (2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

- (3) For this purpose the creditors of a debtor who is an undischarged bankrupt include;
 - (a) Every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and
 - (b) Every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Consideration and implementation of debtor's proposal

Section 258. Decisions of creditors' meeting

- (1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.
- (2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.
- (3) The modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the debtor.

But they shall not approve any modifications by virtue of which the proposal ceases to be a proposal such as is mentioned in section 253.

- (4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.
- (5) Subject as follows, the meeting shall not approve any proposal or modification under which;

(a) Any preferential creditor of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or

(b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

- (6) Subject as above, the meeting shall be conducted in accordance with the rules.
- (7) In this section "preferential debt" has the meaning given by section 386 in Part XII; and "preferential creditor" is to be constructed accordingly.

Section 259. Report of decisions to court

- (1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall report the result of it to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.
- (2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

Section 260. Effect of approval

- (1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).
- (2) The approved arrangement;
- (a) Takes effect as if made by the debtor at the meeting, and

(b) Binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at it) as if he were a party to the arrangement.

- (3) The Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.
- (4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

- (5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), that petition is deemed, unless the court otherwise orders, to have been dismissed.

Section 261. Effect where debtor an undischarged bankrupt

- (1) Subject as follows, where the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications) and the debtor is an undischarged bankrupt, the court may do one or both of the following, namely;
- (a) Annul the bankruptcy order by which he was adjudged bankrupt;
- (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.
- (2) The court shall not annul a bankruptcy order under subsection (1);
- (a) at any time before the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259, or

(b) At any time when an application under section 262 below, or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Section 262. Challenge of meeting's decisions

- (1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely;
 - (a) That a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;
 - (b) That there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who may apply under this section are;
 - (a) The debtor;
 - (b) A person entitled, in accordance with the rules, to vote at the creditors' meeting;
 - (c) The nominee (or his replacement under section 256(3) (a) or 258(3); and
 - (d) If the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) An application under this section shall not be made after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259.
- (4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely;
 - (a) Revoke or suspend any approval given by the meeting;

- (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of the interim order.
- (7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to;
- (a) Things done since the meeting under voluntary arrangement approved by the meeting, and
- (b) Such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

Section 263. Implementation and supervision of approved voluntary arrangement

- (1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under section 255(3)(a) or 258(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may;

(A) Confirm, reverse or modify any act or decision of the supervisor,

(b) Give him directions, or

(c) Make such other order as it thinks fit.

(4) The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The court may, whenever;

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impractical for an appointment to be made without the assistance of the court.

Make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the debtor, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

ประวัติผู้เขียนวิทยานิพนธ์



นายเกียรติศักดิ์ ภมรไมตรี เกิดเมื่อวันที่ 22 สิงหาคม พุทธศักราช 2518 ที่อำเภอเมือง จังหวัดเชียงใหม่ สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์ มหาวิทยาลัย ในปีการศึกษา 2541 และได้เข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต จุฬาลงกรณ์ มหาวิทยาลัย ในปีการศึกษา 2542 สำเร็จเนติบัณฑิตไทย สมัย 54 และอดีตเคยทำงานเป็นเจ้าหน้าที่ ฝ่ายกฎหมาย ของบริษัท ดุสิตธานี จำกัด(มหาชน) เมื่อต้นปีพุทธศักราช 2544 ถึงกลางปี พุทธศักราช 2545