Thailand Update

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Agenda

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  - Draft Amendments to Thai Bankruptcy Act
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- Mediation Center for Financial Disputes (MCFD)
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Introduction

Background:

- **July 1997**: Thai Baht crashes after Bank of Thailand abandons peg to the USD.

- **October 1997**: Thai Financial Sector Authority (FRA) established to oversee rehabilitation/liquidation of 58 finance companies closed/suspended as a result of the crash.

- **June 1998-1999**: Bank of Thailand adopts the "Bangkok Approach" (variant of the London Approach)-Corporate Dept Restructuring Advisory Committee (CDRAC) is created to mediate/administer formal out-of-court workouts of NPLs.
Introduction - (Cont.)

Background:

- April 1998 and April 1999: Thai Bankruptcy Act (Bankruptcy Act, B.E. 2483 (1940) is amended in ’98 and ’99-the Central Bankruptcy Court (CBC) and the Business Reorganization Office are established. Other economic laws are adopted and Thailand gets a new Constitution.
Thai Asset Management Corporation (TAMC)

Background:

- TAMC established by the Emergency Decree on the Thai Asset Management Corporation, B.E. 2544 (2001) on June 7, 2001. Goal is to quickly reduce Thailand’s NPLs to stimulate lending/investment.

- Owned by the Financial Institutions Development Fund (FIDF), TAMC is empowered to issue 10 yr. notes guaranteed by the FIDF to purchase NPLs from qualified State and private financial institutions under prescribed guidelines.
Background:

- TAMC has been given unprecedented powers to accomplish its tasks and is able to conduct an “end run” around the Bankruptcy Act and to use the Central Bankruptcy Court and its processes to force debtors/recalcitrant parties to accept debt restructuring/business reorganization plans.

- TAMC cleared a constitutional hurdle in October 2001 and accepted the first lot of asset transfers on October 15, 2001.
Thai Asset Management Corporation (TAMC) - (Cont.)

Track Record:

- By end of Q1, TAMC met its stated goal of resolving 100 Billion Baht (book value) of NPLs.
- Approx. 50% of the resolved NPLs were debt restructurings; 33% were resolved in the CBC as business reorganization cases.

Thai Asset Management Corporation (TAMC) - (Cont.)

Assessment:

- Notwithstanding the official numbers, the bulk of the resolved cases involve debt restructurings (putting off the inevitable).

- The Emergency Decree establishing the TAMC appears to have been hastily drafted and is full of inconsistencies.
Assessment:

- The TAMC-like CDRAC before it has shown a reluctance to use outside professional and technical assistance—despite having the authority to do so.

- Parties in non-TAMC NPL cases have adopted a “wait and see attitude”—sharp decrease in new filings for formal business reorganization cases before the CBC.
Thai Asset Management Corporation (TAMC) - (Cont.)

Assessment:

- TAMC, while well-intentioned, will not jump start lending and investing in Thailand. These goals are more likely impeded by the government’s failure (i) to enact and adopt key amendments to Thailand’s foreclosure law and Bankruptcy Act (ii) to finalize and enact a secured transactions law (Business Security Act) and (iii) to adopt clear corporate governance standards.
Business Reorganization/Bankruptcy

Draft Amendments to Thai Bankruptcy Act:

- Highlights of key provisions
  - Revises provisions governing appointment/removal/compensation of Planners.
  - Changes the voting requirement for plan approval from 50% to 75%.
  - Simplifies the Proof of Claim process.
  - Streamlines the appellate process.
Draft Amendments to Thai Bankruptcy Act:

- Issues/concerns not addressed by proposed Amendments
  - “Superpriority” status for post-reorganization order loans/ extensions of credit.
  - Committee formation at an earlier stage of the case.
  - Ability to use business reorganization provisions of the Act when debtor’s business is to be sold as a going concern or for liquidating cases.
  - Extending business reorganization provisions of the Act to natural persons (guarantors).
Draft Amendments to Thai Bankruptcy Act:

- Status
  
  ✓ Draft amendments are currently being considered by Thai Council of State.
Central Bankruptcy Court (CBC)

- CBC has 22 specialized judges who have handled complex reorganization cases since the Court’s inception in June 1999.

- CBC has streamlined its procedures and has adopted new technology. Court now conducts videoconference hearings to allow parties “up country” easier access to the CBC and recording equipment has been installed in all the CBC courtrooms in Bangkok—parties don’t have to rely on “judges notes” any more.

- Due to establishment of TAMC, business reorganization filings are down (although CBC is playing a major role in connection with NPLs assigned to the TAMC).
Mediation Center for Financial Disputes (MCFD)

- Established in April 2001 as an arm of the Dispute Resolution Office of the Thai Office of the Judiciary to promote/administer the use of mediation as a means of resolving the thousands of NPL cases clogging the Thai Civil Courts.

- The Office of the Judiciary has established detailed rules and guidelines relating to the use and conduct of mediations proceedings to resolve financial disputes. These rules and guidelines are set forth in the Rules of the Judiciary Administration Commission Concerning the Mediation of Financial Disputes B.E. 2544(2001) and the Rules of the Court of Justice Administrative Committee Concerning Dispute Mediation B.E. 2544 (2001).
Mediation Center for Financial Disputes (MCFD) - (Cont.)

- MCFD has undertaken steps to train and develop a core group of Thai mediators and to increase public and judicial awareness of the benefits of ADR (ABI/FJC training programs).

- A core group of Thai MCFD mediators, who have gone through the ABI/FJC training, have “cut their teeth” on consumer credit card cases are now working on larger NPL cases (2-3 Million Baht). Overall success ratio: 66% (Source: Dispute Resolution Office of the Office of the Judiciary).

- Notwithstanding the foregoing, use of mediation as an alternative to mediation will be an uphill battle (cultural and social obstacles).
Current Thai law does not recognize an all asset lien or a floating charge.

Current Thai law only allows a lien on fixed M &E with serial nos. issued by the Ministry of Industry (cumbersome remedies on default).

The Chuan Leekpai government (predecessor of the current government) prepared a draft Business Security Act inspired in part after Art. 9 of the UCC.

The current draft of the law is being reviewed by the Thai Council of State. At present, there is no clear indication when the draft law will be presented to the Thai Parliament.
Economic law reform has taken a back seat to domestic political squabbles (Thai Rak Thai v. Democrats). Since many of the economic laws at issue were developed under the Democrats’ watch, the current administration seems reluctant to take steps to reform these laws.

The failure to reform key Thai economic laws (Bankruptcy Act, foreclosure law) and to adopt clear corporate governance standards can only serve as a drag on the Thai economy.

The current government’s actions, public statements and policies have fanned the flames of xenophobia and may have a chilling effect on future investment/foreign lending in Thailand (FEER and The Economist fiascos; work permit issues).

Thailand must take concrete steps to fight corruption (Bangkok Post article; “bullets are cheaper”)

Conclusions
Questions & Answers

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