

**THE BOARD OF TRADE OF THAILAND  
THE FEDERATION OF THAI INDUSTRIES  
THE THAI BANKERS' ASSOCIATION  
THE ASSOCIATION OF FINANCE COMPANIES  
THE FOREIGN BANKS' ASSOCIATION**

**FRAMEWORK**

**FOR**

**CORPORATE DEBT RESTRUCTURING IN THAILAND**

The Framework for Corporate Debt Restructuring in Thailand has been drafted and approved by the following organisations as acknowledged by each respective Chairman:

Signed .....  
(M.R Chatu Mongol Sonakul)  
Chairman of the Corporate Debt Restructuring Advisory Committee

Signed .....  
(Mr. Sivaporn Dardarananda)  
Vice Chairman of the Corporate Debt Restructuring Advisory Committee

Signed .....  
(Mr. Vichien Tejapaibul)  
Chairman of the Board of Trade of Thailand

Signed .....  
(Mr. Tawee Butsunton)  
Chairman of the Federation of Thai Industries

Signed .....  
(Mr. Banthoon Lamsam)  
Chairman of the Thai Bankers' Association

Signed .....  
(Mr. Banterng Tantivit)  
Chairman of the Association of Finance Companies

Signed .....  
(Mr. David Proctor)  
Chairman of the Foreign Banks' Association

## INTRODUCTION

**The Board of Trade of Thailand, Federation of Thai Industries, the Thai Bankers' Association, the**

**Association of Finance Companies and the Foreign Banks' Association have jointly prepared this framework for corporate debt restructuring.**

**The framework is non-binding and non-statutory but is a statement of the approach that is expected to be adopted in corporate workouts involving multiple creditors. The framework exists based on general market acceptance and its practices may be altered or amended to serve the needs of the business and financial communities.**

**The basic premise is to ensure that a business can survive if there is a reasonable possibility that it is viable. The framework is designed to promote a spirit of timely co-operation amongst concerned stakeholders for their mutual benefit.**

**There is no intention within this approach to force any creditor to forgo any rights.**

## OBJECTIVE

**SUCCESSFUL IMPLEMENTATION OF AN INFORMAL FRAMEWORK OUTSIDE BANKRUPTCY PROCEEDINGS FOR THE EFFICIENT RESTRUCTURE OF THE CORPORATE DEBT OF VIABLE ENTITIES TO BENEFIT CREDITORS, DEBTORS, EMPLOYEES, SHAREHOLDERS AND THE THAI ECONOMY BY**

- i) MINIMISING LOSSES TO ALL PARTIES THROUGH CO-ORDINATED WORKOUTS.**
- ii) AVOIDING COMPANIES BEING PLACED UNNECESSARILY INTO LIQUIDATION, THEREBY PRESERVING JOBS AND PRODUCTIVE CAPACITY WHEREVER FEASIBLE.**

PRINCIPLE 1. ANY CORPORATE DEBT RESTRUCTURING SHOULD ACHIEVE A BUSINESS, RATHER THAN JUST A FINANCIAL, RESTRUCTURING TO FURTHER THE LONG TERM VIABILITY OF THE DEBTOR.

Implementing Policies

- A. All participants in a corporate debt restructuring exercise must recognize the need for Thai companies to return to commercially viable operations for the foreseeable future. Short term concessions, reduction of principal and interest and even additional credit cannot by themselves make a business viable long-term. Rather, such concessions and reductions are at best a basis to allow a company to implement a business plan that will ensure its long-term profitable existence.
- B. Any proposed debt restructuring must be analyzed in terms of the probability a business plan can and will be implemented that will provide creditors an agreed acceptable return while leaving the debtor able to contribute meaningfully to the Thai economy in the future. Any successful business restructuring will require a business plan which aims for the ongoing viability of the business without reliance on short-term concessions.
- C. A prerequisite to determining the viability of a business is the obligation of the debtor to appoint for the benefit of the creditors an independent and reputable accountant or other expert as nominated by the creditors to undertake appropriate due diligence. (See Principle 9) The provision of credible and reliable financial and operational information is essential in determining the future viability of the affected business. (See Principle 8)  
N.B. For smaller or less complex cases, this provision does not apply.
- D. As the party that is closest to market conditions, and may know what is required to be competitive and profitable in its market, it is incumbent on the management of the debtor after consultation with professional advisors and creditor representatives to present a comprehensive, transparent and achievable business plan including cash-flow projections as a prerequisite to any restructuring or provision of new credit.

PRINCIPLE 2. PRIORITY MUST BE GIVEN TO REHABILITATE ASSETS TO PERFORMING STATUS IN FULL COMPLIANCE WITH BANK OF THAILAND REGULATIONS

Implementing Policies:

- A. Financial restructuring must not be implemented in a manner to merely avoid debt classification or the maintenance of reserves or to evade income recognition rules (See BOT Notification 1837/2541 Attachment 1, paragraph 1).
- B. Reports by the independent accountants, lead institution or creditors' committee must contain at a minimum the information required in paragraph 4.1 of Attachment 1 to the BOT Notification 1837/2541.

- C. A final restructuring agreement should establish at a minimum a monitoring system in conformity with paragraph 4.2 of BOT Notification 1837/2541.
- D. Optimal viable interest rates and payment schedules should be established considering the debtor's actual ability to make payments, a reasonable risk-return for creditors and the legitimate need to minimize reserve requirements.
- E. Any non-traditional restructuring approach such as debt forgiveness, should only be considered as a last resort. To the extent that debt forgiveness is requested, it must be compensated in some manner such as stock or warrants.
- F. A prime consideration in restructuring plans must be to allow the debtor to become and stay current on principal and interest as soon as feasible.

PRINCIPLE

3. EACH STAGE OF THE CORPORATE DEBT RESTRUCTURING PROCESS MUST OCCUR IN A TIMELY MANNER AS REFERRED TO IN APPENDIX I

Implementing Policies

- A. Any delay in implementing the debt restructuring of a company that has the potential to be economically viable diminishes the probability of the resurrection of the company and harms the debtor, creditors, and other stakeholders.
- B. It is thus a fundamental requirement that a schedule of fixed deadlines be established and met in any attempted debt restructuring process. Appendix I is a guideline for such schedules and can be shortened or lengthened if agreed by all parties.

PRINCIPLE

4. FROM THE FIRST DEBTOR-CREDITOR MEETING, IF THE DEBTOR'S MANAGEMENT IS PROVIDING FULL AND ACCURATE INFORMATION ON THE AGREED SCHEDULE AND PARTICIPATING IN ALL CREDITOR COMMITTEE MEETINGS, CREDITORS SHALL "STANDSTILL" FOR A DEFINED, EXTENDABLE PERIOD TO ALLOW INFORMED DECISIONS TO BE MADE

Implementing Policies

- A. Standstills will normally run for an initial limited period of the lesser of sixty calendar days or the time required to gather information and make a preliminary assessment of the commercial viability of the debtor.
- B. Standstill arrangements can be extended pending a full restructuring if commercial viability is demonstrated by the business plan.
- C. During the period of a standstill, individual creditors should not

- (i) amend any outstanding credit facility
- (ii) take additional security or guarantees
- (iii) make demand or accelerate facilities
- (iv) charge default interest
- (v) commence collection or bankruptcy proceedings
- (vi) enforce security except for set-off rights\_

D. During a standstill period, debtors should not without consent of all creditors:

- (i) incur any expenses outside the ordinary course of their businesses;
- (ii) dispose of any assets outside the ordinary course of their businesses;
- (iii) lend money;
- (iv) enter into any transactions with related parties other than in the ordinary course of business and in such a manner that would be conducted with an unrelated party;
- (v) create any additional security interests; or
- (vi) make any preferential payments.
- (vii) enter into any foreign exchange, swap, or derivative transactions except in the ordinary course of their business to cover existing commercial exposures

E. Any creditor not intending to stand still shall give at least three banking days prior written notice to the lead bank of their intention to take any action.

PRINCIPLE 5. BOTH CREDITORS AND DEBTORS MUST RECOGNIZE THE ABSOLUTE NECESSITY OF ACTIVE SENIOR MANAGEMENT INVOLVEMENT THROUGHOUT THE DURATION OF THE DEBT RESTRUCTURE

Implementing Policies

- A. The executive decision-makers of all parties must be directly and actively involved at all stages of the restructuring effort in order to avoid last minute changes and ensure compliance with the agreed schedule.
- B. From the creditors' side, representatives at all meetings must undertake to keep their ultimate decision-makers fully informed at all stages and receive

their timely input (especially requests for further information). Decision-makers must be made aware of all scheduled deadlines and be able to convey their institution's position in conformity with the schedule. Bank officers taking part in restructuring efforts must be delegated the authority to negotiate in the name of their financial institution (See BOT Notification 1837/2541, Attachment 1, paragraph 3.3). Creditor executives are also responsible to ensure that any information provided shall not be used for purposes other than corporate debt restructuring such as insider trading. Furthermore, creditor executives are responsible for ensuring that affiliated units or offices in their organisations not directly involved in the restructuring process do not have access to or receive any such information that is not in the public domain.

- C. Debtor's executive management should provide all requisite information in a timely manner. Such executive management, or persons expressly authorized to act on their behalf in all matters related to the restructuring, must attend all creditor meetings.

PRINCIPLE 6. A LEAD INSTITUTION, AND A DESIGNATED INDIVIDUAL WITHIN THE LEAD INSTITUTION, MUST BE APPOINTED EARLY IN THE RESTRUCTURING PROCESS TO ACTIVELY MANAGE AND COORDINATE THE ENTIRE PROCESS ACCORDING TO DEFINED OBJECTIVES AND DEADLINES.

Implementing Policies:

- A. One lead creditor institution should establish goals and schedules, organize inter-creditor discussions, help resolve inter-creditor issues, liaise with financial and other advisors, lead negotiations with the debtor and ensure the distribution of information to, and timely responses from, all other creditors.
- B. The lead institution shall also draw up an action plan and a time frame to be used as a guideline for debt restructuring process.
- C. A lead institution should have the following qualifications (in descending order of priority):
  - 1. qualified and available expertise to manage the entire process so that all major objectives and deadlines are met whenever possible;
  - 2. a professional working relationship with the debtor's senior management;
  - 3. a substantive exposure to the debtor.
- D. The lead institution may not legally commit other creditors but its opinions and suggestions must be given great weight.

PRINCIPLE 7 IN MAJOR MULTICREDITOR CASES, A STEERING COMMITTEE REPRESENTATIVE OF A BROAD RANGE OF CREDITOR INTERESTS SHOULD BE APPOINTED

Implementing Policies:

- A. Any steering committee should be of a manageable size while representative of all creditors regardless of class and size of exposure. All creditors must feel that their interests are fully taken into account and they have an active and meaningful role in the process.
- B. Each steering committee member should be assigned designated creditors, keep such creditors timely informed and actively seek input and support at every stage. Failure to do so will cause great delay, “hold-out” problems and possible break-down of the negotiations at a late stage after considerable expense.
- C. The steering committee should serve as both advisor and sounding board for the lead institution conducting the negotiations. The lead institution should be chairman of the steering committee.
- D. No member of a steering committee should have any authority to commit any creditor or the lead institution.

PRINCIPLE 8 DECISIONS SHOULD BE MADE ON COMPLETE AND ACCURATE INFORMATION WHICH HAS BEEN INDEPENDENTLY VERIFIED TO ENSURE TRANSPARENCY.

Implementing Policies:

- A. The fullest possible information on all relevant matters (including but not limited to all information required under applicable Bank of Thailand regulations) should be promptly gathered and independently confirmed for the analysis as to the current condition of the company, its future viability and therefore the feasibility of restructuring. Information is to be shared amongst the debtor and all creditors to ensure transparency in the process. Such information should include but not be limited to the items specified in Appendix II.
- B. At every meeting of the creditors’ committee, the executive (decision making) officers of the debtor should make themselves available and answer all questions.
- C. Where the creditors request, the debtor should appoint a qualified independent accountant or other expert to verify the information used in debt restructuring as set forth in Appendix II.

- D. Each individual creditor must take the responsibility to obtain any regulatory or other approvals to release any necessary information in its possession in a timely manner. The debtor must cooperate in any such process including the authorization of such release.

PRINCIPLE 9. IN CASES WHERE ACCOUNTANTS, ATTORNEYS AND PROFESSIONAL ADVISORS ARE TO BE APPOINTED, SUCH ENTITIES MUST HAVE REQUISITE LOCAL KNOWLEDGE, EXPERTISE AND AVAILABLE DEDICATED RESOURCES

Implementing Policies:

- A. All consultants, financial advisors, accountants, attorneys, etc, must have the requisite knowledge of restructuring and local market, culture, practices laws, regulations, etc. It is therefore incumbent on all concerned to ensure that appropriately qualified professional advisors are appointed.
- B. All advisors must have adequate resources available to devote to the project and must be fully licensed as required by Thai laws and regulations or by the laws of their country of practice in the case of foreign advisors. The relevant firms must also ensure they have no conflicts of interest in accepting the role.
- C. Creditors that wish to use independent advisors (i.e. an advisor not appointed to represent all lenders) should bear the costs thereof without reimbursement from the debtor or other creditors.

PRINCIPLE 10. WHILE IT IS NORMAL PRACTICE TO REQUEST THE DEBTOR TO ASSUME ALL THE COSTS OF PROFESSIONAL ADVISORS, LEAD INSTITUTIONS AND CREDITORS COMMITTEES, CREDITORS HAVE A DIRECT ECONOMIC INTEREST, AND HENCE A PROFESSIONAL OBLIGATION, TO HELP CONTROL SUCH COSTS.

Implementing Policies:

- A. Where circumstances require an independent accountant or other expert, the debtor cannot unreasonably delay the appointment.
- B. The reasonable costs, fees and expenses of the lead institution and members of the creditors' committee should be recovered in the debt restructuring schedule as a priority payment or reimbursed by all creditors on a pro rata basis to their exposures should a restructuring not be viable.

PRINCIPLE 11. THE MINISTRY OF FINANCE (MOF) AND THE BANK OF THAILAND (BOT) SHOULD BE KEPT INFORMED ON THE PROGRESS OF ALL DEBT RESTRUCTURING TO AID THE REVIEW AND REGULATORY AND SUPERVISORY FRAMEWORK AND TO FACILITATE CORPORATE DEBT RESTRUCTURING

PRINCIPLE 12. THE ROLE OF THE CORPORATE DEBT RESTRUCTURING ADVISORY

## COMMITTEE

### Implementing Policies

- A. The Corporate Debt Restructuring Advisory Committee shall follow-up developments in debt restructuring.
- B. The Corporate Debt Restructuring Advisory Committee shall review and implement policies to facilitate debt restructuring for the public good.
- C. The Corporate Debt Restructuring Advisory Committee may also act as an independent intermediary in the restructuring process where cases are particularly difficult or where other efforts have failed. The committee may well be a catalyst to activate sluggish negotiations.

## PRINCIPLE 13. CREDITORS EXISTING COLLATERAL RIGHTS MUST CONTINUE

### Implementing Policies

- A. Holders of duly created security interests in or on property essential to the continued operations of the debtor's business should not be required involuntarily to surrender such security without adequate compensation. However, holders of security interests in non-essential property may independently negotiate with the debtor for a voluntary liquidation of that asset.
- B. By agreement, any cash surplus received from the sale of assets by a debtor, or a secured creditor in excess of its secured claim amount, may be placed in an escrow account and must be distributed among all creditors.
- C. Undersecured creditors should participate in the reorganization to the extent of the difference between their total claim and the value of non-essential security held by them.

## PRINCIPLE 14. NEW CREDIT EXTENDED DURING THE RESTRUCTURING PROCESS ABOVE EXISTING EXPOSURES AS OF THE STANDSTILL DATE ON REASONABLE TERMS IN ORDER THAT THE DEBTOR MAY CONTINUE OPERATIONS MUST RECEIVE PRIORITY STATUS BASED ON TITLE ORIENTATED SECURITY, INTERCREDITOR AGREEMENTS OR INDEMNITIES.

## PRINCIPAL 15. LENDERS SHOULD SEEK TO LOWER THEIR RISK AND HENCE THEIR REQUISITE RETURNS, THROUGH AN IMPROVED SECURITY PACKAGE AND PROFITABILITY-BASED BENEFITS RATHER THAN INCREASED INTEREST RATES AND IMPOSITION OF RESTRUCTURING FEES.

### Implementing Policies

- A. As compensation for increased risk, unencumbered assets should be made available to participating creditors. Possible benefits of any recovery of the

debtor should be equitably shared among all stakeholders.

PRINCIPLE 16. DEBT TRADING IS APPROPRIATE UNDER CERTAIN CONDITIONS BUT THE SELLING CREDITOR HAS THE PROFESSIONAL OBLIGATION TO ENSURE THE BUYER DOES NOT HAVE A DETRIMENTAL EFFECT ON THE RESTRUCTURING PROCESS

- A. Potential sellers should make their “sell or stay” decisions as early as possible in the restructuring process. Such selling creditors have a professional obligation to ensure that their buyer does not intend to have a detrimental effect on the restructuring process. In particular, such a seller must fully inform the buyer of the most current status of the restructuring and of their obligations under it and that previously decided issues will not be reopened for further negotiations because of the buyer’s recent arrival.

PRINCIPLE 17. RESTRUCTURING LOSSES SHOULD BE APPORTIONED IN AN EQUITABLE MANNER WHICH RECOGNIZES LEGAL PRIORITIES BETWEEN THE PARTIES INVOLVED

Implementing Policies

- A. In the restructuring process, the debtor, its shareholders and its creditors must be prepared to co-operate with each other to grant concessions.
- B. The debtor itself should be called upon to absorb losses by means of disposals of non-core assets, elimination or postponement of non-essential capital expenditures, bonuses, and other non-essential assets or outflows.
- C. In recognition of previously-paid dividends and other benefits obtained, shareholders should next be called upon to eliminate dividends, inter-company payments and other outflows.
- D. Creditor losses should be shared amongst creditors of similar status pro-rata to their existing exposures, but subject always to Principle 12 concerning secured creditor rights.

PRINCIPLE 18. CREDITORS RETAIN THE RIGHT TO EXERCISE INDEPENDENT COMMERCIAL JUDGMENT AND OBJECTIVES BUT SHOULD CAREFULLY CONSIDER THE IMPACT OF ANY ACTION ON THE THAI ECONOMY, OTHER CREDITORS AND POTENTIALLY VIABLE DEBTORS

Implementing Policies \_\_\_\_\_ :

- A. Creditors may retain the right to exercise their independent commercial judgment and objectives at all times. However, no creditor should, secretly or otherwise, attempt to improve its security or payment position during a restructuring effort.
- B. The restructuring framework is to facilitate an improved business as well

as financial restructuring to the mutual benefit of all parties. Therefore, participants must not seek to maximize their own gain at the risk of jeopardizing the benefit to others or the restructuring process. Creditors and interested parties must at all times carefully consider at a senior level any potentially negative impact that their independent actions may have on the Thai economy, other creditors and the debtor.

**PRINCIPLE 19.** ANY OF THE PRINCIPLES OR IMPLEMENTING POLICIES CONTAINED IN THIS FRAMEWORK CAN BE WAIVED, AMENDED OR SUPERCEDED IN ANY PARTICULAR RESTRUCTURING WITH THE CONSENT OF ALL PARTICIPATING CREDITORS.

### APPENDIX 1

Stage	Time
1. Call meeting of debtor, creditors and interested parties	Anytime by debtor or creditor
2. First creditors meeting, appointment of	On seven days notice after #1
3. Creditors Committee/Lead Bank (see Principles # 6 and 7), establishment of time-frame Creditors submit claims in writing to Creditors Committee/Lead Bank	Within fifteen days of #2
4. At any creditors meeting a debtor representative with decision-making authority must appear and answer any and all questions	Continuous
5. Debtor's "Management" (i.e. directors or authorized officers) must submit at a minimum the following information: <ul style="list-style-type: none"> <li>a) assets, liabilities and obligations the debtor owes to third persons;</li> <li>b) property given by the Debtor as security to creditors and the date given;</li> <li>c) property of other parties in the Debtor's possession;</li> <li>d) the Debtor's shareholdings in other companies or juristic persons;</li> <li>e) names, businesses and addresses of all creditors;</li> </ul>	Within 7 days of #2

<p>f) names, businesses and addresses of the Debtor's debtors;</p> <p>g) details of the property including payments which the Debtor expects to receive in the future.</p> <p>h) all written consents for Creditors to release to other Creditors all information on the assets and liabilities of the Debtor (See also Principle 8)</p>	
<p>6. The appointment of an independent accountant and/or other experts shall be carried out as requested by the creditors based on the agreed terms of reference</p>	<p>Within 7 days of #2</p>
<p>7. Debtor submits all further information requested by creditors or independent accountant necessary to prepare plan (See also Principle 8)</p>	<p>Within two months of #2, extendable up to one month maximum</p>
<p>8. Plan submission by Creditors Committee, debtor and independent accountant to all creditors</p>	<p>Within three months of #2, extendable up to two months maximum</p>
<p>9. Creditor Meeting on plan</p>	<p>10 days after #8</p>
<p>10. Creditors propose amendments to plan</p>	<p>Within 7 days of #8</p>
<p>11. If plan consideration not completed, meeting adjourned to next business day</p>	<p>Next business day after #9</p>
<p>12. New creditors meeting if valid request approved for adjournment of meeting to consider amendments to plan</p>	<p>10 days after adjournment</p>
<p>13. Decision on whether to privately reorganize, formally reorganize under Bankruptcy Act or liquidate</p>	<p>At creditors meeting under #9 or #12 within three months from #2</p>

*Every party (debtor, creditors, auditors, attorneys, advisors) should give the process utmost priority. Creditors should not ask debtors to adhere to fixed schedules and then fail themselves to provide timely input.*

## APPENDIX 2

### GROUP STRUCTURE

- All subsidiaries and associates and percentage holding in each case
- country of incorporation
- indicate whether dormant

### GROUP LIABILITIES

- all liabilities (including contingent and off-balance sheet) to be included with current utilisations, original maturities and purpose of each separate utilization
- lists should be reconciled and all discrepancies resolved

### RECOURSE STRUCTURE

- specific details of lender, borrower, secured party, guarantors/letter of comfort and any limitations thereon to be provided
- details of any security, negative pledge and subordination arrangements

### INTERCOMPANY POSITIONS

- all current credit, trade, service, royalty or other revenue-earning intercompany agreements and current position
- subordination arrangements
- shareholder and director remunerations and agreements

### GROUP ASSETS

- asset registers
- encumbered or unencumbered

### BUSINESS PLAN

- market analysis
- competitive analysis
- any existing independent reports on market position or competitiveness of debtor

### CASH FLOW

- historical cash flow statements for in past three years
- cash-flow projections for next 3-5 years and sensitivity analysis
- planned cost cutting and revenue enhancement initiatives
- planned sale of non-strategic assets and anticipated proceeds

### ANALYSIS & PROJECTIONS

- historical cash flow statements for in past three years
- cash-flow projections for next 3-5 years and sensitivity analysis
- planned cost cutting and revenue enhancement initiatives
- planned sale of non-strategic assets and anticipated proceeds

### MAJOR AGREEMENTS FOR LAST 3 YEARS

- customers
- suppliers
- lenders
- shareholders
- management
- executives

### ANY OTHER INFORMATION ON CURRENT CONDITION AND FUTURE VIABILITY