



“Legal Aspects of NPL Resolution”

Virtual Training Course on NPL Resolution

by

Economic Research and Regional Cooperation Department (ERCD)
The Asian Development Bank (ADB)

บริษัท บริหารสินทรัพย์สุขุมวิท จำกัด

SUKHUMVIT ASSET MANAGEMENT CO., LTD.

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NPL Resolution Process of SAM



Management of Distressed Assets

INPUT



Management of NPL & NPA Portfolios

Legacy Transfers

Acquisitions through bidding

for minimizing loss

for optimizing profit



PROCESS



1. Loan Resolution

- Issue invitation to debtors/guarantors/mortgagors/pledgers
- Negotiate the debt restructuring
- Prepare the debt compromise documents, debt restructuring agreement, and related documents
- Payment (i) cash (ii) transfer of collateral/assets (iii) conversion of debt to equity



2. Judicial Process

- Initiate a compulsory performance and put the collateral out for auction



3. Auction Process

- Public auctions organized by the Legal Execution Department (LED)



4. NPA Process

- Collateral appraisal to minimum price setting, Eviction, Renovation
- Sale of NPA: Auction, Direct sale

OUTPUT

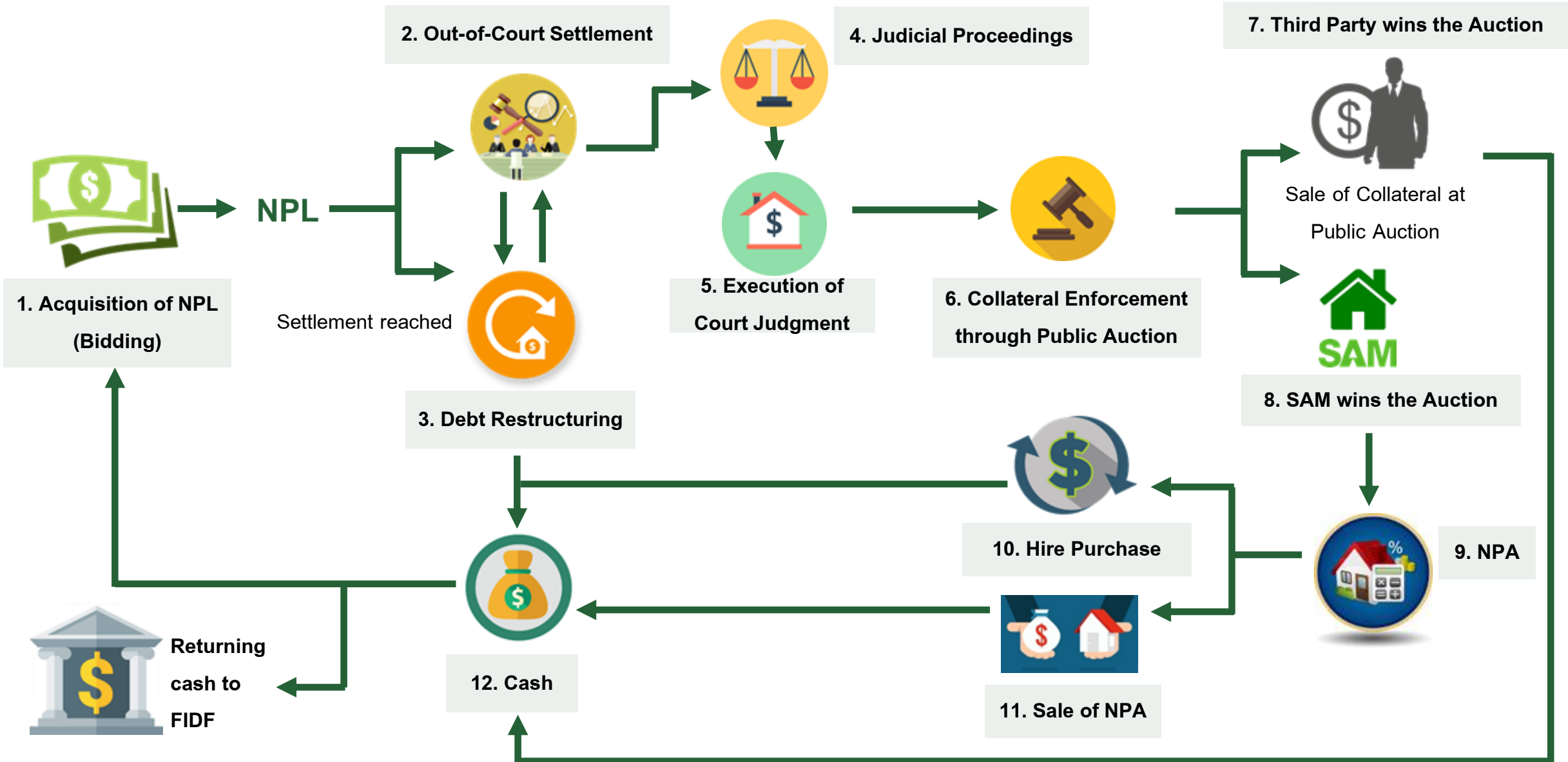


Cash Collection

From

- NPL resolution
- Sale of NPA
- Cash collection at LED

Business Process at SAM



Legal Aspects of NPL Resolution

- Source: <https://pubdocs.worldbank.org/en/538621527523049630/NPL-Conference-Day2-1-Andres-Martinez.pdf>

A WB Report on the importance of legal aspects of NPL resolution by Andres Martinez in 2018. He has classified the approaches to resolve debts as follows:

- Out-of-court enforcement: contractual agreement i.e. DPO, TDR
- In-court enforcement: secured and unsecured debts
- Out-of-court workouts: contractual voluntary agreement
- Hybrid procedures: private workouts with the involvement of the judiciary or administration authorities
- Judicial reorganizations: formal reorganization of viable enterprises under court supervision.
- Liquidations: liquidations through the courts with no restructuring

The study also cites that

- ① Studies show that the more developed insolvency systems help increase creditors' recovery rate and reduce NPLs, improve investment climate, preserve jobs, permit going concern it predictably applied.
- ① Modern day financial crises have stressed the importance of debt enforcement and insolvency regimes in maintaining financial system stability.
- ① Time is the enemy of recovery and insolvency proceedings. Delays in enforcement actions and insolvency proceedings reduce the available options (assets realization, sale as a going concern, operational restructuring).



Legal Process

Loan Restructuring and Legal Process

Civil court

Before filing
a civil suit

- Loan restructuring agreement (+amendment)

After filing

- Compromise agreement in court (by court order)

Court
order

- Loan restructuring agreement (+amendment)



Negotiation and Loan restructuring can be done at any stages of legal action

Bankruptcy court

Receivership Order by Court

- Debt Composition prior to Bankruptcy (by court order)

Bankruptcy

- Debt Composition after Bankruptcy (by court order)

Bankruptcy court

Business
Reorganization

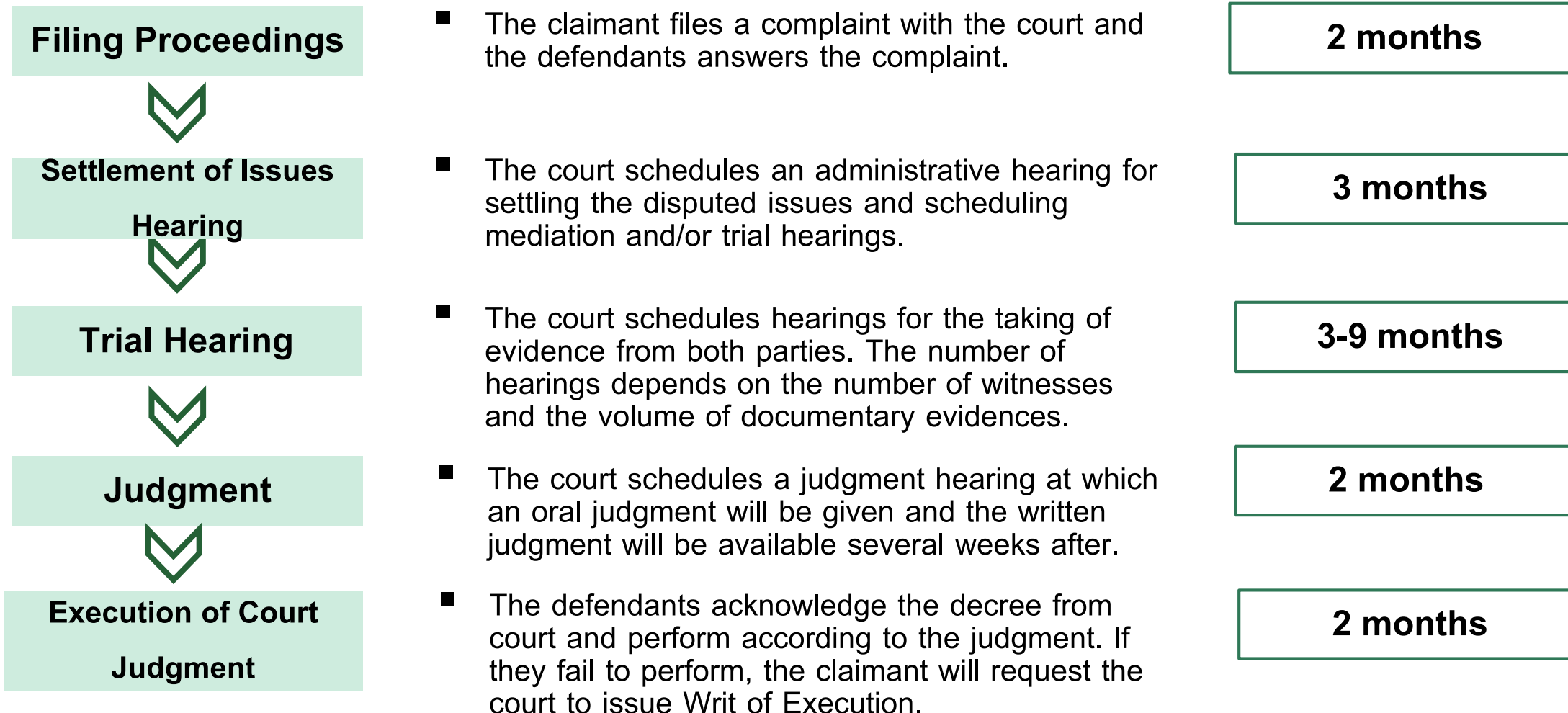
- Rehabilitation Plan (by court order)



Legal Framework

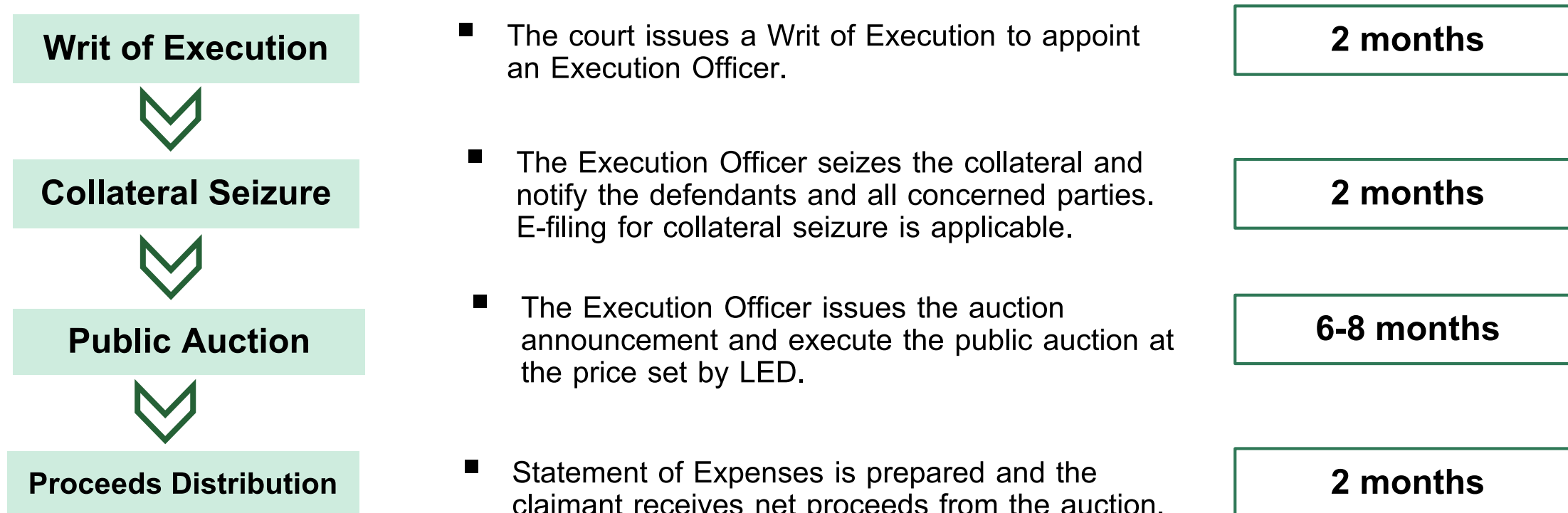
Civil Proceedings in Thailand

- ◎ A simple Civil case filing in the court of first instance takes 1-1.5 years, approximately. (approx.)



Execution Process in Thailand

- When the defendant fails to make payments rendered in the judgment, the collateral enforcement process will begin.



Results of Public Auction Announcement



- ① Loan restructuring agreements were reached after public auction announcements

Round of Announcement	Agreements reached in Year 2020
1	3%
2	4%
3	1%
4	14%
5	3%
None	3%
Total	3%

Pre-Legal Execution Mediation Procedure



Parties indicate their intention to the Mediation Center



The Mediation Center prepares mediation briefs



The Mediation Center contacts the parties, their lawyers and a mediator to set the date, time and place. Facilitates the process.



Mediation Process



Successful



Unsuccessful

Parties sign the settlement agreement before the mediator.



No need to proceed with the legal execution.



The judgment creditor proceeds the legal execution process.

Post-Legal Execution Mediation Procedure



Parties indicate their intention to the Mediation Center



The Mediation Center prepares mediation briefs



The Mediation Center contacts the parties, their lawyers and a mediator to set the date, time and place. Facilitates the process.



Mediation Process



Successful



Unsuccessful

Parties sign the settlement agreement before the mediator.



Agreement outcome leads to a stay of legal execution, revocation of property seize and legal execution (pursuant to the relevant laws)

Mediation ends. Proceed with the legal execution process.

Domestic legislation governs restructuring and insolvency matters in Thailand

After the Asian Financial Crisis, Thailand reformed its Bankruptcy law to follow the model of the US Bankruptcy Law of 1998. The establishment of the Bankruptcy Court and the Procedure for Bankruptcy Cases Act was enacted in 1999. The Court has jurisdiction over all bankruptcy cases, as well as all civil matters pertaining to bankruptcy cases.

Chapter 3/1 of this Act governs the proceedings for business reorganization which allows the insolvent debtor to avoid bankruptcy. The reorganization or restructuring allows the company in financial distress to continue business operations so that the creditors might profit from the continued operations of the company, ending up recovering more than the case of liquidation.

- Bankruptcy Procedures in Thailand can ONLY be started by a creditor against a debtor who is regarded insolvent and owes more than 2 million Baht in the case of a company, or more than 1 million Baht in the case of an individual.
- Bankruptcy Procedures take place in the Central Bankruptcy Court, Court of First Instance. Appeals go to the Supreme Court. An appeal against a judgment or order of the Central Bankruptcy Court can be submitted to the Central Bankruptcy Court within one month after pronouncement.
- The Central Bankruptcy Court shall proceed and pronounce a decision in an expeditious manner.
- If a party is in default of appearing in court, special rules apply to the disadvantage of the absent party.

- ① The Debtor/Creditor/Government Authority files a petition for restructuring the debtor's business.
- ② The Debtor receives an “automatic stay” upon the Court's approval of the petition.
- ③ The Plan Preparer drafts the rehabilitation plan for the creditors' approval.
- ④ The Court approves the rehabilitation plan.
- ⑤ The Plan Administrator manages the business and assets of the debtor according to the rehabilitation plan within 5-year timeframe with two 1-year extension allowed.
- ⑥ The Court finally decides that the rehabilitation plan was successful then the business is rehabilitated. Otherwise the bankruptcy proceedings will begin.

Bankruptcy & Restructuring under the Bankruptcy Act (1)



The Comparison between the bankruptcy and restructuring under the Bankruptcy Act 1999 and its amendments

	Bankruptcy	Restructuring
The Person who is eligible to file the case/petition with the Court	<ul style="list-style-type: none"> • Creditor • The debtor by its liquidator if after the completion of liquidation process, the assets of the company are less than the liabilities of the company. 	<ul style="list-style-type: none"> • Creditor/Debtor/Relevant Government Authority
The conditions for filing the petition	<ul style="list-style-type: none"> • Debtor is insolvent • The debtor is an individual person/or juristic person • The debt amount is not less than 1 million Baht for individual person, or • The debt amount is not less than 2 million Baht for Juristic Person 	<ul style="list-style-type: none"> • The Debtor is insolvent • The debtor is a limited company/public company or any juristic which is specify in ministerial regulations • The debt amount is not less than 10 million Baht • a reasonable cause and prospect for the reorganization of the debtor's business (debtor must not be placed under absolute receivership) • Filing petition in good faith

The Comparison between the bankruptcy and restructuring under the Bankruptcy Act 1991 and its amendments

	Bankruptcy	Restructuring
The effect by the Court Order	Upon the Court issuing an absolute receivership order against the debtor, only the receiver has the authority to manage the business and collect all assets of the debtor for distribution to the eligible creditors who file their claims for repayment of debt within the time frame as specified by the law.	Upon the Court accepting the petition for restructuring, the automatic stay of the debtor shall be applied. The Plan Preparer will be appointed to draft the rehabilitation plan for the creditors' approval before submitting to the Court. The Plan Administrator manages the business and the assets of the debtor according to the approved plan.
The Operation when entering the process/The effect by the Court Order	<ul style="list-style-type: none"> The debtor shall file proposal for a composition in satisfaction of debts in the creditors meeting. If there is no Proposal or any Approval for a composition in the meetings, the official receiver must report to the Court and the Court shall have to order that the debtor is bankrupt. After 3 years from the order's date, the order might be dismissed under some conditions specify by the law, for example, there is no further asset to be seized. 	<ul style="list-style-type: none"> In case the Court approves the rehabilitation plan, the plan administrator shall implement the plan within 5-year timeframe with two 1-year extension allowed. In the Court decides the plan is not successful, it may order its termination and/or put the company under absolute receivership, leading to bankruptcy proceeding.

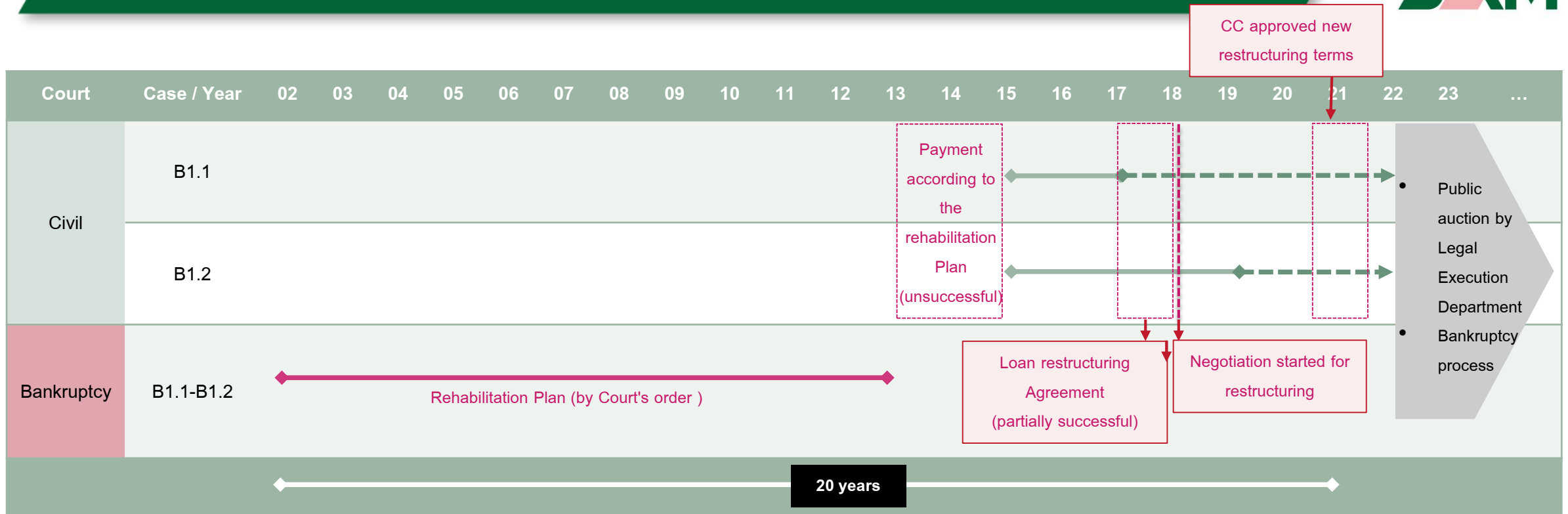
- In recent years, there has been a slight increase in the number of submissions for insolvency proceedings (both bankruptcy proceedings and business rehabilitation proceedings).
- According to the statistics of the Central Bankruptcy Court (Bankruptcy Court), the competent body exercising jurisdiction in insolvency matters in Thailand, nearly 8,398 bankruptcy proceedings were filed in 2019 (compared to 5,415 cases in 2018)
- The number of submissions for business rehabilitation proceedings has also slightly increased, with 28 proceedings initiated with the court in 2019 (as compared to 23 cases in 2018). The number of insolvency cases is still on an upward trend, as this approach to restructuring debt is increasing in popularity.
- Due to the COVID-19 situation, business sectors have been adversely affected across the board. The hospitality and tourism industry, including airlines, which is an important contributor to Thai GDP, has been directly affected by the closure of the border. A number of businesses have had to enter business rehabilitation proceedings with the aim of resolving financial difficulties which have arisen as a result of the pandemic. One high-profile example has been Thai Airways International PCL which is the national airline operator of Thailand.

- ① Clearly define the rights of ownership
- ② Have clear legal obligations between the debtor and the creditor
- ③ Orderly resolve the disputed claims, including debt recovery and realization of collateral for unpaid debt
- ④ Have a fair balance between the protection of creditors and that of debtors
- ⑤ Have an efficient and effective insolvency system
- ⑥ Have a clear procedures for transfer of rights
- ⑦ Remove the legal obstacles to transfer of rights (e.g. prior permission of debtor)
- ⑧ Have legal protection for AMC officials and staff



Experiences and Lesson Learned

Loan Restructuring: Case Study



- Showing time length started from the start of Black case
- Showing time length started from the start of Red case
- Showing time length started from the start of Black case until Court cancelled the Rehabilitation plan, and the debtor continued to comply with the conditions

The mixture of loan resolutions under the lengthy court proceedings

- ① The borrower is an operating company in a borrowers' group of 11 companies which most of them are bankrupt. This group of borrowers were mandatorily transferred from TAMC in 2003.
- ② The borrower filed for restructuring in 2002 and the court terminated its rehabilitation plan in 2013 due to reaching the limitation of plan extension. It was agreed among the creditors' meeting to allow the borrower to repay according to the plan.
- ③ The borrower failed to make repayment, SAM filed cases in Civil Court and the borrower compromised in court in 2017 and 2019.
- ④ The borrower started negotiation in 2017 for partial release of collateral and failed to make final payment so SAM enforced the collateral.
- ⑤ Early May this year the borrower returned to negotiation to repay the failed deal in exchange of partial collateral release and SAM continues to enforce the remaining collateral shared with other borrowers in the group.

Comparison: Thailand and Asian Countries

- ◎ IMF Working Paper “Tackling Private Over-Indebtedness in Asia: Economic and Legal Aspects”, published on August 28, 2020.

- ◎ Since the 1997 Asian crisis, countries have built up experience in the use of informal restructuring.
- ◎ Informal restructuring was widely used in the financial restructuring of enterprises in **Thailand**, Indonesia, Korea and Malaysia.
- ◎ Japan also developed a strong practice in the use of informal restructuring techniques.
- ◎ The legal culture in Asia is extremely receptive to negotiated solutions compared to adversarial litigation, which explains the success of informal debt restructuring.

- Most Asian countries, including ASEAN, have introduced reorganization procedures.
- Reorganization procedures represent an integral part of the insolvency framework in the large economies (China, India, Japan, and Korea).
- However, there are important differences in practice: reorganizations are not frequent in China, whereas in India, an attempt at reorganization is an essential part of every corporate insolvency procedure. Korea and Japan have reorganization regimes that more closely follow the international standard.
- Among ASEAN countries, **Thailand** introduced reorganization procedures after the crisis and has amended the law to include further improvements.
- The legal framework in Indonesia and the Philippines includes reorganization procedures, while Singapore and Malaysia have recently reformed their systems to introduce reorganization procedures too. However, there are important differences in the regulation of reorganization procedures which impact their effectiveness.

- Asian enforcement systems are generally effective, in varying degrees.
 - Most countries in Asia require a judicial procedure for the enforcement of claims, including secured claims (China, Japan, Korea, Philippines, Indonesia, and Thailand).
 - Enforcement of secured claims can take place out of court in some Asian countries (India, Malaysia, and Singapore).
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- Some countries have created specialized insolvency courts (Thailand, Korea, China, and India).
 - The development of a qualified insolvency profession is pending in most Asian systems.
 - India has already implemented the new framework for the insolvency profession, and Singapore is planning to introduce a new regime for insolvency professionals.



Development of Legal Framework

- ① The Debt Collection Act B.E. 2558 is the first regulation pertaining to debt collection in Thailand and is effective on 2 September 2015.
- ① The Act is intended to provide more protection to debtors while the supervision on debt collection will be impartial and of the same standard. In addition, penalty provisions are specifically provided in the Act.

The concerning points in debt collection act

- ① Proper Self-introduction
- ① Valid Power of Attorney from the Employer
- ① Appropriate collection dialogues and limited number of calls
- ① Undisclosed of 3rd party information



Private Trustee

Bankruptcy Act Amendment: Private Trustee



- An initiative of Legal Execution Department to increase its capacity in resolving insolvency. The draft of the amendment is under review by the Legal Department, Ministry of Justice.

Objective

- To appoint the Private Trustee to manage the business and assets of debtors in bankruptcy and restructuring cases under the supervision of the Official Receiver.

Highlights

- Qualifications of private trustee and its responsibilities
- The appointment and termination of private trustee by the Committee for Private Trustee Practice Control
- Data Center of Assets of the Bankrupted Persons
- Roles of the Official Receiver as Regulator to supervise and monitor the operations of Private Trustee

Expected benefits

- Improve and increase efficiency of bankruptcy proceedings
- Improve the capacity and reduce time in the assets collection and distribution
- Improve resolving insolvency score in WB's Ease of Doing Business rating

The logo for SAM, featuring the letters 'S', 'A', and 'M' in a bold, white, sans-serif font. The letter 'A' is stylized with a red horizontal bar extending from its base to the right, partially overlapping the letter 'M'.

SAM

Thank You

