



The comparison between the city of Detroit bankruptcy under the US bankruptcy code and the debt management of Bangkok Metropolis

Tinlaphas Chooan Jaiwan

School of Law, Walailak University, Nakhon Si Thammarat 80160, Thailand

Article Info

Article history:

Received 18 April 2023

Revised 29 September 2023

Accepted 12 December 2023

Available online 27 December 2024

Keywords:

BTS,
Bangkok,
Chapter 9,
debt management,
Green Line Sky Train Project

Abstract

The debt problem caused by the Green Line Sky Train Project that Bangkok Metropolis has been facing is one of the most critical problems that needs to be resolved urgently. This problem inspired the researcher to study the documents to find out how Bangkok Metropolis, as a legal person and local administrative organization, plans for its debt management and what the nature of organization and property management enacted in Bangkok Metropolis Administration Act A.D.1985 is. This article compared and summarized the differences between Thai and American laws on debt management. The study found that while the United States of America has Chapter 9 of the United States Bankruptcy Code, Thailand lacks the law helping with debt management. Therefore, to resolve the Bangkok Metropolis debt problem and to set the legal standard on organization and property management, the study deems it appropriate to apply Chapter 9 as the essential law to set the management criteria based on the Thai context. Moreover, this application will help reduce the burden of the Thai Government in budgeting the annual government statement of expenditure for the disbursement of the local administrative organizations.

© 2024 Kasetsart University.

Introduction

The debt problem caused by the Green Line Sky Train Project that Bangkok Metropolis has been facing with Bangkok Mass Transit System Public Company Limited (BTSC) and Mass Rapid Transit Authority of Thailand (MRTA) is one of the most critical

problems that needs to be resolved urgently. Moreover, as Case Number 1926 A.D.2022, the Central Administrative Court delivered the judgment to pay off the debt because Bangkok Metropolis made an administrative infraction from the project previously mentioned. When considering the standard criteria wildly used to start the bankruptcy process: financial liquidity,

E-mail address: tinlaphas.ja@wu.ac.th.

<https://doi.org/10.34044/j.kjss.2024.45.4.35>
2452–3151/© 2024 Kasetsart University.

This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

cash flow, or stop paying (United Nations Commission on International Trade Law [UNCITRAL], 1999, p. 61) and Bangkok's obligation balance, together with the income of 2021: 69,728.57 million baht, which was lower than the expenses in the fiscal year of 2022: 78,979.44 million baht (Digital Government Development Agency (Public Organization)[DGA], 2021; The Active Thai PBS, 2022), such indicated that Bangkok Metropolis was facing financial difficulties. Bangkok Metropolis stopped paying the debt to the creditor since May 2019, leading to two letters from the creditor asking for payment dated 18th September 2020 and 15th January 2021. However, Bangkok Metropolis has remained inactive in paying off the debt. They reasoned they could not pay the debt because the Bangkok Metropolitan Council (BMC) did not approve the budget. The council gave the reasons that Bangkok Metropolis had limited accumulated funds, and they have had the policy to postpone the fare collection on the Green Line Sky Train until the present (2022). For all these reasons, Bangkok Metropolis cannot collect the fare to pay the expenses for project implementation (The Krungthep Thanakom Co., Ltd. [KT] & Bangkok Mass Transit System Public Company Limited [BTSC] v. Mass Rapid Transit Authority of Thailand [MRTA], 2022). This situation can reflect the financial difficulties of Bangkok Metropolis. It can be presumed that Bangkok Metropolis is facing insolvency. Such has also led to the study to find answers to the following questions: Which methods will Bangkok Metropolis apply to pay the creditor? Can the creditor bring a charge against Bangkok Metropolis to become bankrupt? Can the administrators place Bangkok Metropolis into the rehabilitation process under the Bankruptcy Law?

Therefore, this article aimed to study the current legal measures to solve this debt problem of Bangkok Metropolis by comparing it to the debt problems of Detroit Municipality. (2013 US Code Title 11 – Bankruptcy Chapter 9 (§§ 901–946), 2013) Detroit Municipality faced difficulties in providing essential services for people and was introduced into the condition of inability to pay debts. On Thursday, 18th July 2013, the City of Detroit filed a petition seeking bankruptcy protection and the adjustment of debts under chapter 9 of the United States Bankruptcy Code. (Reveal the court judgment after the bankrupt of Detroit city, 2013), and on 11th December 2014, Detroit exited bankruptcy

protection and its finances returned to the city's control under three-years monitoring by the Detroit Financial Review Commission (Detroit bankruptcy, 2022).

Literature Review

This article aimed to study the debt management of Bangkok Metropolis compared to the US law. Thus, the researcher studied the legal principles relevant to Bangkok Metropolis, such as Bangkok Metropolis Administration Act A.D.1985, theoretical principles of debt management, A Supreme Court judgment, and other academic publications to compare to the Chapter 9 of the United States Bankruptcy Code, that is an important law enacted to resolve Detroit's municipal debt.

Organization and Debt Management of Bangkok Metropolis

Generally, by virtue of an obligation, the creditor is entitled to claim performance from the debtor (Thai Civil and Commercial Code 1992, 1992). However, after proceeding to sue and the debtor does not pay, the law has an exit for the creditor by execution under The Civil Procedure Code of Thailand. When introducing the debtor into the bankruptcy process, it should consider the measures to start the bankruptcy as a tool to define and introduce the debtor into the protection mechanism and rules and regulations of the Bankruptcy Law. Some issues of the bankruptcy law apply the criteria by considering the stopping of payment of the debtor on the payment due dates. Besides the payment due dates, some issues consider the circumstances that reflect the financial difficulties. Some consider the situation that the debtor is insolvent (UNCITRAL, 1999, pp. 60–65). For Thai Bankruptcy Law, it considers the situations that the debtor is insolvent or some situations are occurring on the debtor's solvency under the assumption that the debtor is insolvent (Bankruptcy Act, A.D.1940, 1940).

The Bankruptcy Act, A.D.1940 Section 7 states that “An insolvent debtor may be adjudged bankrupt if such debtor has been domiciled within the Kingdom or has carried out business within the Kingdom, whether personally or through representation, at the time of the bankruptcy petition against the debtor or within the period of one year prior thereto.”

Section 8 states, “If any of the following circumstances occurs, it shall be presumed that the debtor is insolvent:

(5) The debtor is subject to seizure of property under a writ of execution or has no property susceptible of seizure for payment of the debt;...

(7) The debtor makes a notification to any of his creditors of his inability to pay the debt;

(9) The debtor has received a letter of demand from the creditor at least twice with an interval of not less than thirty days and the debtor has failed to make payment of the debt...

An objective of introducing the debtor into the bankruptcy process is to collect the debtor’s property and then sell it to distribute amongst creditors who file for repayment of debt under the regulations as prescribed by the laws. Section 109 states that the property shall be deemed the property in a bankruptcy action and can be distributed amongst creditors as follows:

(1) all the property which the debtor has at the time of commencement of the bankruptcy, including claims exercisable over other persons’ property, except:”

The Thai Civil and Commercial Code Section 1307 states that “No seizure of State property can be effected, whether such property forms part of its public domain or not.” Things outside of commerce are things incapable of appropriation, and those legally inalienable (Thai Civil and Commercial Code 1992, 1992). Alternatively, under the law, the state property is not under execution liability (The Civil Procedure Code of Thailand 1935, 2017). For the process of bankruptcy, Section 14 states that at the trial of a bankruptcy action upon the creditor’s plaint, the Court must be satisfied with the facts as provided in section 9 or section 10. If the Court is satisfied, it shall issue an absolute receivership order against the debtor. However, if it is not satisfied or the debtor proves that he/she can make full payment or if any other causes indicate the undesirability of making the debtor bankrupt, the Court shall dismiss the action (Bankruptcy Act, A.D.2483, 1940).

However, the debtor can choose rehabilitation, which is one of the solutions for temporary financial liquidity. This is a chance for the debtor to have rehabilitation or debt restructuring to run their business continuously (Supreme Court judgment Number 8428 B.E. 2544, 2001). The principle of international rehabilitation system has two parts: debt restructuring and debtor reorganization. Thus, in some counties, the rehabilitation is called “Reorganization,” aiming to reorganize and restructure the debt by reducing debt

and cost, increasing investment, and converting debt into equity (Mahakul, 2016). The principle in filing a petition for the reorganization is stated in Section 90/2 Paragraph one of Bankruptcy Act, A.D.1940 as follows: “The creditor, the debtor, or a State agency under section 90/4 may file a reorganization petition of its business under this Chapter’s provisions, regardless of whether a bankruptcy action has been instituted against the debtor.”

When considering the Bangkok Metropolis Administrative Organization Act, A.D.1985, Section 89 prescribes that Bangkok Metropolis is authorized to implement 27 activities within its districts. In summary, the Bangkok Metropolis has the authority to operate the following matters in the Bangkok Metropolis area: administration, providing public services, support and promotion of educational management, and finance and treasury. These affairs are operated under the administration of the Bangkok Metropolis Council (BMC) and the Governor of Bangkok (The Bangkok Metropolis Administrative Organization Act 1985, 1985).

The BMC has the primary authority to consider the law on the activities authorized by the Bangkok Metropolis based on the Bangkok Metropolis Administrative Organization Act, A.D.1985 and the Ordinance of Bangkok on the Accumulated Funds in 2019. In comparison, the Governor of Bangkok shall be the chief of Bangkok’s metropolitan government officers and Bangkok metropolitan employees and shall be responsible for the official affairs of Bangkok Metropolis. The Governor of Bangkok shall have the authority, such as to set the Bangkok Metropolis’s policies and to administer its official affairs under the laws; to give instructions, approvals, and endorsements regarding the official affairs of Bangkok Metropolis; or to introduce a draft ordinance of Bangkok. The official activities of Bangkok Metropolis are under the control of the Minister of Interior.

For the sources of Bangkok revenue, Section 117 of the Bangkok Metropolis Administrative Organization Act, A.D.1985 allows Bangkok Metropolis to earn revenues by such as the following actions:

...

(8) Borrowing money from legal persons, organizations, departments, bureaus, or ministries upon approval of the Council of Bangkok;

(9) Financial support by other local governments, government agencies, or the Government, and grants-in-aid provided by the Government;

...et cetera.”

Furthermore, Section 119 states, “Money of Bangkok Metropolis shall be disbursed as permitted by the ordinances on annual or additional expenditure budgets, failing which, the money shall be disbursed according to the criteria and procedure set forth in the laws, statutes, rules, regulations, or ordinances concerning such.”

Based on the above laws, Bangkok Metropolis has debt, and the Governor of Bangkok will be responsible for the organization and debt management under the policy’s design and appointment for the administrative organization of Bangkok Metropolis following the Bangkok Metropolis Administrative Organization Act, A.D.1985. However, there are various ways for debt management in the USA as stated in Title 11, United States Code. Whether they are Chapter 7: Liquidation (Sections 701 to 784), Chapter 9: Adjustment of Debts of a Municipality (Sections 901 to 946), Chapter 11: Reorganization (Sections 1101 to 1195), Chapter 12: Adjustment of Debts of a Family Farmer or Fishermen with Regular Annual Income (Sections 1201 to 1232) or Chapter 13: Adjustment of Debts of an Individual with Regular Income (Sections 1301 to 1330). In this article, the researcher specifically mentions Chapter 9 of the US Bankruptcy Code.

Chapter 9 of the US Bankruptcy Code

Introduction to Chapter 9

The United States Code is the codification by subject matter of the general and permanent US laws. It is divided by broad subjects into 53 titles. (U.S. Government Publishing Office, n.d.) Bankruptcy law is rightful law for federal matters, contained in Title 11 of the United States Code (Michigan Legal Publishing, 2021).

Although Chapter 9 is a part of the ordinance in the US Bankruptcy Code, the process of filing a petition for organization and property management in Chapter 9 is the individually specific ordinance. It is independent of other parts of the ordinance, especially Chapters 7 and 11. According to Chapters 7 and 11, it can be said that the municipality in the USA cannot be bankrupt or undergo rehabilitation, like the municipality in Thailand. However, if any municipalities have many debts, the central government may decide to operate in those locals, including filing a petition following the process for an order on organization and property management under Chapter 9 (Uttabolyukol & Sophonpirom, 2022, p. 319).

Chapter 9 – Adjustment of Debts of a Municipality (Sections 901 to 946)

Chapter 9 aims to provide financially-distressed municipality protection from their creditors and allows them to formulate plans to reorganize their debts. Municipalities that file Chapter 9 cases continue to carry out essential government functions during this period of debt restructuring (The Administrative Office of the U.S. Courts, n.d.).

Automatic Stay

Like all other chapters of bankruptcy, filing a Chapter 9 petition brings about an automatic stay. This process stops all collection actions against the municipality. In some cases, the automatic stay also stops collection actions against municipal officials and officers. Stopping these collection efforts allows the municipality to evaluate its finances and create plans to reorganize its debts (The Administrative Office of the U.S. Courts, n.d.).

Reorganization Plan

If the judge allows the case to proceed, the municipality will create a plan to reorganize its debts and repay its creditors. The municipality can reorganize its debts by taking one or more of the following actions:

1. Extending the length of the loan term.
2. Reducing the principal amount owed on the debt.
3. Reducing the interest rate on the debt.
4. Refinancing the debt

5. Taking out the better terms of a new loan to pay off the old loan, etc. (The Administrative Office of the U.S. Courts, n.d.)

Although Thailand and the U.S.’s government structure and legal system are very different, Chapter 7 and Chapter 11 of the United States Bankruptcy Code are a part of the source of the Bankruptcy Act A.D. 1940. Based on the establishment objective, Bangkok Metropolis has a duty to carry out public services, causing the property of Bangkok Metropolis to become the public’s property, and being not liable to execution (Section 301). However, it is a legal person with rights and responsibilities under the law. Enforcement of debt repayment legally proceeds when it has the obligation. It does not mean that when Bangkok Metropolis has debts, it is exempted from paying those debts. In practical application, the issue where the government department fails to comply with the judgment to repay will be proposed to the cabinet meeting to resolve and to order for

enforcement (The Royal Decree on Cabinet Submission and Cabinet Meeting 2005, 2005). If it does not comply with the cabinet's resolution, it is deemed to break a regulation and be punished by the law (Civil Service Act 1992, 1992). This is another enforcement that should prompt Bangkok to solve the mentioned debt issue.

Methodology

This qualitative research mainly studied various legal documents and case studies to learn the problems that need an amendment appropriate to current situations in society. Analysis began with data collection and the comparative study of two different types of legislation: the Thai and US Bankruptcy Codes. Bangkok Metropolis and Detroit City in the U.S. were selected as the study area. Then, the researcher compared these two cities on the aspect of Thai law to Chapter 9, Title 11, and the United States Code to find the conclusion on the legal measurement to solve the debt problem, including suggesting solutions.

Results and Discussion

Regarding the sources of obligation Bangkok has faced, the debt is from two causes. First is the construction cost of the Green Line Sky Train that the Mass Rapid Transit Authority of Thailand (MRTA) transferred to Bangkok following Order Number 3/2019, directed by the Leader of the National Council for Peace and Order on the Operation of Green Line Sky Train Project, dated on 11th April 2019 announced in the Government Gazette (Order of National Council for Peace and Order, 2019). Second is purchasing cost for electrical work, machinery, and payment to the Bangkok Mass Transit System Public Company Limited (BTSC) for mass transit railway services of the Green Line Sky Train. (Kanokwan, 2022) Based on these sources of obligation, the Central Administrative Court judged on 7th September 2022 that Bangkok Metropolis must pay 11,755,077,952.10 Baht to the BTSC with interest from the day of suing until the debt is wholly paid within 180 days from the final judgment date (The Krungthep Thanakom Co., Ltd. & Bangkok Mass Transit System Public Company Limited v. Mass Rapid Transit Authority of Thailand 1926-2022, 2022). Furthermore,

Bangkok has a debt burden waiting for an exact number and clear contract on the Green Line Sky Train, of over 100 billion Baht, and such is still unresolved (Kanokwan, 2022). Guidelines and policies for Bangkok debt management remain unclear, whether it is the legality of the administrative contract or outstanding debt, including unclear plan formulation for debt payment and plan implementation. Although the law gives the right to the creditor to sue the debtor for debt enforcement (Thai Civil and Commercial Code 1934, 1934), the problems often arise after the Court decides and orders the debtor to pay off the debt. When the debtor does not pay, Thai law has the solutions by execution under the Civil Procedure Code of Thailand or introducing the debtor into the bankruptcy process under the Bankruptcy Act, A.D.1940. Thai Bankruptcy law sticks to the measurements to define that debtors who can file a petition to start the bankruptcy process (UNCITRAL, 1999) must be "insolvent" (Bankruptcy Act 1940, 1940). Alternatively, it shall be presumed that the debtor is insolvent if any circumstances occur (Bankruptcy Act 1940, 1940).

When considering the Bangkok obligation balance, expenses, and revenues (Digital Government Development Agency, 2021: The Active Thai PBS, 2022), it can be seen that Bangkok Metropolis is facing financial difficulties and falls under the legal presumption that it is insolvent (Bankruptcy Act 1940, 1940). Bangkok Metropolis stopped paying the debt to the BTSC since May 2019, leading to two letters from the creditor asking for payment dated 18th September 2020 and 15th January 2021 with a period of no less than 30 days. However, Bangkok Metropolis has remained inactive in paying off the debt (Bankruptcy Act 1940, 1940). They accepted this obligation, but they informed the BTSC that they could not pay it off (Bankruptcy Act 1940, 1940). They claimed that the Bangkok Metropolitan Council (BMC) did not approve the budget because Bangkok had limited accumulated funds (The Krungthep Thanakom Co., Ltd. & Bangkok Mass Transit System Public Company Limited v. Mass Rapid Transit Authority of Thailand 1926–2022, 2022). Furthermore, it has been confirmed that the creditor cannot seize Bangkok property to pay debt Bankruptcy Act 1940, 1940) because the state property is not under the execution liability (The Civil Procedure Code 1934, 1934).

Can Bangkok Metropolis Be Bankrupt?

The next topic to consider is whether Bangkok can be introduced into the debt management process under the Bankruptcy Law or not. Starting with the objectives of the bankruptcy process, introducing the debtor into the bankruptcy process aims to collect the debtor's property and then sell to distribute amongst creditors who file for debt repayment under the laws' prescribed regulations. The property in the bankruptcy case distributed to the creditors shall be deemed the property the debtor has at the time of the bankruptcy commencement (Bankruptcy Act 1940, 1940). There must be only the debtor's property. Bangkok Metropolis is a legal person and local administrative organization (The Bangkok Metropolis Administrative Organization Act 1985, 1985) and shall be invested with the authority to take care and provide public services, including carrying out the activities for the benefit of citizens within its districts (The Constitution of the Kingdom of Thailand 2017, 2017; The Bangkok Metropolis Administrative Organization Act 1985, 1985). The property of Bangkok is a public treasure that cannot be transferred according to law; therefore, cannot be incorporated into the property of Bangkok, which is a debtor in a bankruptcy case (Thai Civil and Commercial Code 1992, 1992) and the state property is not under the execution liability (The Civil Procedure Code 1934, 1934).

The Bankruptcy Act, A.D.1940 does not state to disallow the creditor to sue the debtor, who is the government department. Nevertheless, the Court can legally dismiss the case at the bankruptcy trial on the creditor's plaint. Even though the fact shows that Bangkok Metropolis has the quality that the creditor can sue for bankruptcy, the Court shall dismiss the action because it has other causes that indicate the undesirability of making the debtor bankrupt (Bankruptcy Act 1940, 1940). For this case, suing Bangkok Metropolis to be bankrupt fails under the spirit of the law because debt payment is impracticable for Bangkok as an insolvent legal person.

Furthermore, the judgment of the Supreme Court number 5969 B.E.2559 confirmed that the creditor could not file a petition to the government department for bankruptcy because the department's debt may be paid to the creditor by the disbursement of the annual government statement of expenditure. It can be said that if Bangkok has debt, the administration plan may be formulated or

Bangkok ordinances on Additional Expenditure Budget of the Fiscal Year B.E. (Issue Number ...) can be drafted and proposed to the Bangkok Metropolitan Council (BMC) to enact the law for finding money to pay the debt (The Bangkok Metropolis Administrative Organization Act 1985, 1985).

Does Bangkok Have the Right to File a Petition for "Reorganization"?

An alternative to solve the Bangkok financial liquidity problem by filing a petition for "Reorganization" or debt restructuring and rehabilitation of the new debtor (Mahakul, 2016) under the Bankruptcy Act, A.D.1940 is unable to proceed. As the government department, Bangkok Metropolis is not a particular type under the definition "debtor or government department," which can file a petition for business reorganization (Bankruptcy Act 1940, 1940).

Compared to the US Law, Chapter 9 of the United States Bankruptcy Code was brought to solve the debt problem for cities such as Alabama, Jefferson County, California, and Orange County (Gramlich, 2011). Even the Detroit Municipality, which had a debt of up to 1.85 ten billion dollars and went into insolvency, also decided to exercise the right to file a petition for organization and property management under Chapter 9 (Reveal the court judgment after the bankruptcy of Detroit city, 2013). It can be seen that Thailand lacks a bankruptcy law on organization, property, or debt management for the debtor in local government administration, and it also needs concrete ways and specific amendments. If Thailand applies a method of debt management under Chapter 9 of the United States Bankruptcy Code, Bangkok Metropolis may have another choice for its organization and debt management, with a more explicit and chronological method than it is now.

Comparison between Chapter 9 of the United States Bankruptcy Code and Debt Management of Bangkok Metropolis

1. Regulation on debt management of Bangkok Metropolis

If Bangkok has debt, the Governor of Bangkok, who is responsible for performing Bangkok's official duties, has authority for policy formulation and Bangkok administration under the Bangkok Metropolis Administrative Organization Act, A.D.1985.

In the USA, Chapter 9 of the U.S. Bankruptcy Code was enacted to apply to the municipality in 1937. This law helps the municipality ask for the Court's protection in a financial crisis. During the debt restructuring plan, the municipality can continue operating the basic affairs for public services.

2. Does the Bankruptcy Act, B.E. 2483, have the same ordinance as Chapter 9 of the U.S. bankruptcy code?

The Bankruptcy Act, A.D.1940 does not have the same ordinance as Chapter 9 of the U.S. Bankruptcy Code. It has only the bankruptcy and reorganization law, the as same as Chapter 7 and Chapter 11 of the U.S. Bankruptcy Code, including the Insolvency Act 1986 of England (Kunkeaw, 2016).

In addition, Chapter 9 is enacted in the U.S. Bankruptcy Code, but the process of filing a petition for organization and property management in Chapter 9 is an individually specific ordinance. It is independent of other parts of the ordinance, especially Chapters 7 and 11. The municipality in the USA cannot be bankrupt or reorganized like the municipality in Thailand. However, the municipality can file a petition for organization and property management under Chapter 9 which is the specific ordinance (Uttabolyukol & Sophonpirom, 2022).

3. Regulation on legal protection during financial illiquidity of Bangkok Metropolis

Thailand does not have a law enacted to ask for protection from Bangkok's bankruptcy. However, the USA has Chapter 9 of the U.S. Bankruptcy Code, which is the ordinance aiming to protect the municipalities, including townships, boroughs, villages, towns, cities, parishes, and counties. Moreover, a municipality may also comprise instrumentalities or public agencies established to construct, maintain and operate income-producing enterprises. Chapter 9 helps the municipality ask for the Court's protection in a financial crisis. The most mentioned and historic case in the USA is the city of Detroit, Michigan. Detroit Municipality filed for bankruptcy based on Chapter 9 on 18th July 2013 in case number 13-53846 (City of Detroit, 2013). The Court approved the city's adjustment plan on 7th November 2014, just 17 months after the city filed for bankruptcy. Compared to other municipal bankruptcies, it was sooner than predicted. Detroit filed for bankruptcy protection on 11th December, and its finances returned to the city's control, with three-year

supervision of the Detroit Financial Review Commission (Detroit bankruptcy, 2022).

4. Automatic stay

Thailand specifies the "Automatic Stay" in the Bankruptcy Act, A.D.1940 Chapter 3/1 Part 2: Petition for and Approval of Business Reorganization Section 90/12. It is a part of the reorganization, and with this part, Bangkok will have time for organization and debt restructuring without worrying about litigation. Nevertheless, the law does not specify that Bangkok can be introduced into the reorganization. Thus, Automatic Stay cannot be applied to Bangkok (Mahakul, 2016).

Whereas the US municipality has regulations on temporary mitigation for the financial crisis, the debtor can continue the business when they exercise the right to file a petition for organization and property management under Chapter 9. The automatic stay of section 362 of the Bankruptcy Code can be applied in Chapter 9 cases. It manages to stop all collection actions against the debtor and its property upon filing the petition.

5. Organization and property management

The Bangkok Metropolis Administrative Organization Act, A.D.1985, specifies that the administrator of Bangkok Metropolis formulates the administration plan and policies for Bangkok organization and property management. These administration plans and policies depend on the economic and social situations, political problems, and terms of administration at that time.

Chapter 9 is the law to support the debt management of local government administration. Based on the reorganization law, plans for improving organization and debt structures shall be applied *mutatis mutandis*. It influences the organization and property management by operating step by step and having actual time operation (The United States Bankruptcy Code, n.d.).

When the Court takes the case to judicial process following Chapter 9, the municipality will formulate a plan to reorganize its debts and repay its creditors by taking one or more of the following actions:

1. Extending the length of the loan term.
 2. Reducing the principal amount owed on the debt.
 3. Reducing the interest rate on the debt.
 4. Refinancing the debt
 5. Taking out the better terms of a new loan to pay off the old loan.
- etc.

6. What happens when a municipality files for Chapter 9?

Without the ordinance like Chapter 9, Thailand has no procedure for property management like in the USA. After the municipality files a petition following Chapter 9, the results are as follows:

Municipal finances are introduced into the Court's jurisdiction but are different from corporate or personal finances in Chapter 11 or 13 cases. Under those sections, courts have broad leverage to control the company's finances or individuals to find alternatives to push ahead. In addition, creditors have more leverage, for example, by foreclosing on the home of a bankrupt individual.

However, Chapter 9 bankruptcy states that creditors cannot, for example, foreclose on a municipal building for debt reimbursement. Above all, the courts have no authority to make other policy decisions on behalf of the municipality. That authority remains with the local organizations under the U.S. Constitution. Under Chapter 9, municipalities must find a solution by creating debt restructuring plans, and courts can approve or dismiss them with inputs from other stakeholders (Gramlich, 2011).

7. Jurisdiction

In Thailand, cases about Bangkok debt enforcement depend on the case category caused by officials' wrongful act (The Public Intervening Responsibility Act 1996, 1996) or breach of administrative contract (Act on Establishment of Administrative Courts and Administrative Court Procedure 1999, 1999) which is under the jurisdiction of Administrative Court. If it defaults on civil contract, the case will be under the Court of Justice under the Civil Procedure Code of Thailand and the law for the organization of courts of justice.

In general, the U.S. bankruptcy court is less active in conducting a municipal bankruptcy case than it is in corporate reorganizations under Chapter 11. The bankruptcy court's responsibilities in Chapter 9 cases are generally limited to the following actions: approving or rejecting the petition, confirming a debt adjustment plan, and ensuring plan implementation. However, in practice, the municipality may agree to exercise the court jurisdiction in a variety of the traditional areas of court monitoring in bankruptcy to acquire the protection of court orders and take out the need for multiple forums to decide issues (Justia, 2022).

Conclusion and Recommendation

When Bangkok Metropolis falls under the assumption that it is insolvent (Section 8 Bankruptcy Act 1940, 1940), there is only the Bangkok Metropolis Administration Act B.E. 1985 specifying that the administration has authority for policy formulation and property management plan. Besides this act, there are no other legal measures to resolve the debt problem. Moreover, introducing Bangkok into the process under the Bankruptcy law fails under the spirit of the law (Bankruptcy Act, A.D.1940 and Supreme Court judgment Number 5969 A.D. 2016). Similarly, Debt Restructuring or "Reorganization" is inapplicable under the law because Bangkok Metropolis is not a particular type under the definition "debtor or government department" entitled to file a petition with the Court for business reorganization (Bankruptcy Act 1940, 1940).

Compared to the solutions to the debt problem of the Detroit Municipality (City of Detroit, Case number 13-53846) the Detroit Municipality had a debt burden of up to 1.85 ten billion dollars and faced difficulty in providing the essential services to its people. However, shortly after the Court accepted the adjustment plan of the city, Detroit exited bankruptcy protection on 11th December 2014 and its finances returned to the city's control under three-year monitoring by the Detroit Financial Review Commission (Detroit Bankruptcy, 2022). Furthermore, not only Detroit Municipality but also 620 municipalities in the USA applied for Chapter 9 to ask for bankruptcy protection and to readily become free from debt (Gramlich, 2011).

Therefore, to create the legal measures to solve the Bangkok debt problem by considering and comparing Chapter 9 of the United States Bankruptcy Code, the research suggests that:

1. Thailand, facing financial illiquidity, should apply Chapter 9 to ask for jurisdiction for bankruptcy protection and organization and property management. It should adjust to match the Thai local government administration's social context and structure. Bangkok will profit from this application by having explicit, accurate, and step-by-step regulations and guidelines for managing its existing debt.

2. It should let the Central Bankruptcy Court, the particular jurisdiction on business and property management of the organization, have authorization to play a role in Bangkok property

and debt supervision, ordering to allow or dismiss the request for introducing into the process of organization and property management, and approving the plan for organization management and debt restructuring improvement. However, the Central Bankruptcy Court has no authorization to make policy decisions. Bangkok Metropolis still maintains those authorities as before. The Central Bankruptcy Court also has no authority to order the liquidation and selling of Bangkok property like other types of bankruptcy. During this bankruptcy protection, an Automatic Stay will be performed to let the debtor have time for reorganization and debt restructuring without worrying about litigation for debt enforcement.

Conflict of Interest

The author declares that there is no conflict of interest.

Acknowledgments

We wish to thank Walailak University for funding this article.

References

- Act on Establishment of Administrative Courts and Administrative Court Procedure 1999. (1999, October 5). *Thai Government Gazette* (Vol. 116, No. 94A, pp. 1–10). <https://www.krisdika.go.th/librarian/get?sysid=876823&ext=pdf>
- Bankruptcy Act A.D.1940. (1940, December 30). *Thai Government Gazette* (No.57, pp. 962–963).
- Cabinet Resolution on to Commission Bangkok Metropolis to Accept Management and Debt Burden Transferred by Mass Rapid Transit Authority of Thailand or MRTA (2018, November 26). Ministry of Interior.
- City of Detroit. (2013). 13-53846 United State Bankruptcy Court Eastern District of Michigan. <http://www.mieb.uscourts.gov/detroit>
- Civil Service Act 1992. (1992, March 31). *Thai Government Gazette* (Vol. 109, No. 31, p. 39).
- Detroit bankruptcy. (2022, November 20). In *Wikimedia*. https://en.wikipedia.org/wiki/Detroit_bankruptcy
- Digital Government Development Agency (Public Organization). (2021). Government budget and expenditure. <https://data.go.th/en/dataset?groups=government>
- Gramlich, J. (2011, November 22). *Municipal bankruptcy explained: What it means to file for chapter 9*. https://www.pewtrusts-org.translate.google/en/research-and-analysis/blogs/stateline/2011/11/22/municipal-bankruptcy-explained-what-it-means-to-file-for-chapter-9?_x_tr_sl=en&_x_tr_tl=th&_x_tr_hl=th&_x_tr_pto=sc
- Justia. (2022, October). *Purpose of municipal bankruptcy*. <https://www.justia.com/bankruptcy/docs/basics/chapter-9/purpose-of-municipal-bankruptcy/>
- Kanokwan. (2022). *Retracing Bangkok trillion debt problem and misery in extending concession to BTS*. <https://workpointtoday.com/bts-sky-train-bangkok/>
- Krung Thai Bank Public Company Limited V Nam Kam Subdistrict Administrative Organization or Nam Kam Subdistrict Municipality and there. (2016). 5969-2016 Supreme Court Judgment Number. <https://deka.in.th/view-602554.html>
- Kunkeaw, A. (2016). *Bankruptcy law* (14th ed.). Krungsiam Publishing.
- Mahakul, V. (2016). *Law description on bankruptcy for trial process of debtor's rehabilitation*. The Thai Bar.
- Michigan Legal Publishing. (2021). *Federal rules of bankruptcy procedure*. <https://www.federalrulesofbankruptcyprocedure.org/>
- Natalie Conatser. (2021, September 7). The Bankruptcy Code of the United States. *BankruptcyHQ*. <https://bankruptcyhq.com/guides/bankruptcy-code/>
- Order Directed by Leader of National Council for Peace and Order Number 3/2019. (2019, April 11). *Thai Government Gazette* (Vol. 136, No.93, p. 1). <http://www.oic.go.th/FILEWEB/CABINFOCENTER6/DRAWER004/GENERAL/DATA0002/00002427.PDF>
- Reveal the court judgment after the bankrupt of detroit city. (2013, December 5). *Bangkokbiznews*. <https://www.bangkokbiznews.com/world/547939>
- Supreme Court judgment Number 8428 A.D.2001. (2013, January 1). <https://deka.in.th/view-67163.html>
- Thai Civil and Commercial Code 1992. (1992, April 8) *Thai Government Gazette* (Vol. 109, No. 42, p. 213). <https://www.krisdika.go.th/librarian/getfile?sysid=300167&ext=htm>
- The Administrative Office of the U.S. Courts. (n.d.). *Chapter 9 - Bankruptcy basics*. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-9-bankruptcy-basics>
- The Active Thai PBS. (2022, April 6). *Where does bangkok earn money? And how does it affect the policy direction?*. <https://theactive.net/data/bangkok-revenue-policy>
- The Bangkok Metropolis Administrative Organization Act 1985. (1985, August 31). *Thai Government Gazette* (Vol. 102, No. 115, pp. 1–31). <http://www.local.moi.go.th/2009/pdf/p.bangkok2528.pdf>
- The Civil Procedure Code of Thailand 1935 (1935 & rev.2017). *Thai Government Gazette* (Vol. 52. p. 301). <https://www.krisdika.go.th/librarian/get?sysid=570093&ext=htm>
- The Constitution of the Kingdom of Thailand 2017. *Thai Government Gazette* (Vol. 134, No. 40A, p. 74). https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1038&filename=index
- The Krungthep Thanakom Co., Ltd. [KT] & Bangkok Mass Transit System Public Company Limited [BTSC] v. Mass Rapid Transit Authority of Thailand [MRTA] 1926–2022 The Central Administrative Court 2022.
- The Public Intervening Responsibility Act 1996. *Thai Government Gazette* (Vol. 113, No. 60A, pp. 1–4). <http://regu.tu.ac.th/quesdata/Data/A61.pdf>
- The Royal Decree on the Cabinet Commission and Cabinet Meeting 2005. *Thai Government Gazette* (Vol. 122, No. 22A, pp. 1–11). <http://www.krisdika.go.th/librarian/getfile?sysid=449577&ext=htm>

2013 US Code, Title 11 – Bankruptcy Chapter 9 - Adjustment of Debts of a Municipality (§§ 901–946) (rev.2013). <https://law.justia.com/codes/us/2013/title-11/chapter-9/>

United Nations Commission on International Trade Law [UNCITRAL]. (1999). *Legislative guide on insolvency law*. Legal Execution Department.

U.S. Government Publishing Office. (n.d.). *About the United States Code*. <https://www.govinfo.gov/app/collection/uscode>

Uttabolyukol, M., & Sophonpirom, S. (2022). Interesting judgment of the supreme court: Can we sue the government department to be bankrupt? *Ramkhamhaeng Law Journal*, 11(1), 313–320. <https://so05.tci-thaijo.org/index.php/lawjournal/article/view/260238/175243>