



Debt to the public but not public debt: Seeking legal solutions to Bangkok's debt obstacles.

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Abstract

Facing an unprecedented fiscal challenge stemming from the Bangkok Mass Transit System (BTS) Green Line extension and lingering effects of COVID-19, Bangkok bears a debt burden of THB 40 billion, exceeding that of any other local self-governed organization in Thailand. Despite falling outside the definition of public debt and its assets being legally immune from seizure, Bangkok remains obligated to repay this debt. However, its current financial shortcomings and existing solutions, such as acquiring additional loans, issuing bonds, seeking government intervention, negotiating with creditors, or restructuring, are either practically infeasible or untested within the Thai context, making finding a solution critically urgent.

Researchers suggest adapting principles akin to those enshrined in Chapter 9 of the US Bankruptcy Code and integrating them into the existing Thai bankruptcy statute. This approach could offer a valuable and structured framework for effectively restructuring Bangkok's debt burden while ensuring the continued provision of essential public services. Notably, the proposal includes an automatic stay provision, offering temporary relief from creditors. Furthermore, concerns that typically deter American municipalities from pursuing Chapter 9, such as adverse market reactions or population decline, are deemed less relevant within the specific context of Bangkok

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Introduction

Bangkok Metropolitan Administration is the local administrative organization as the legal entity. The primary responsibilities include providing public

utility services, developing infrastructure, mitigating public disasters, and ensuring the safety and security of the population. (Bangkok Metropolis Administrative Organization Act, B.E. 2528 [1985]; Determining Plans and Process of Decentralization to Local Government

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Organization Act B.E. 2542 [1999]). Bangkok has had an annual expenditure budget of at least 70 billion baht for the past five years, beginning in 2018. [Figure 1](#) shows the annual expenditure budget from 2018 to 2022. Additionally, in certain years, supplementary expenditure budgets have been requested, particularly in regard to Bangkok's current debt issue arising from the Green Line Project (BTS: Bangkok Mass Transit System Public Company Limited). It is expected that Bangkok is going to demand an additional expenditure budget for a subsequent fiscal year to associated with the Bangkok mass transit project.

In the case of Bangkok's revenue, it is divided into two types: revenue collected directly by Bangkok itself and revenue collected on its behalf by other government agencies, which generates annual revenue of no less than 60 billion baht. However, Bangkok's revenue decreased in 2020 and 2021. The main reason that this happened was the repeal of the previous law's collection of building and land taxes, as well as local maintenance taxes, and the enactment of the Land and Building Tax Act B.E. 2562 (2019), which became effective on January 1, 2020. This also includes the impact of the COVID-19 pandemic, which prompted Bangkok to impose tax breaks to alleviate the burden on people as well as organizations. These measures have reduced Bangkok's revenue. [Figure 2](#) summarizes Bangkok's revenue from 2017 to 2021.

Although Bangkok has significant revenue from tax collection, as well as subsidies from the government and loans from external organizations, (The Bangkok Metropolis Administrative Organization Act 1985, Section 117) at present, Bangkok has undergone rapid urbanization and development, demanding substantial infrastructure investments and public services. However, pursuing growth has also resulted in a significant rise in the city's debt. Various aspects of infrastructure development, such as transportation systems and utilities, need considerable financial resources. Bangkok has an extensive public transportation network, including the Bangkok Mass Transit System (BTS) Green Line, which is a mass transit system that connects the city center with the suburbs. The extension of the BTS Green Line, which offered free rides until April 2021 and cost THB 25.5 billion (approximately \$770 million), was financed by a loan from the Japan International Cooperation Agency (JICA) (Sawasdee Thailand, 2023). The extension is expected to increase the ridership of the BTS Green Line by 60,000 passengers per day (Wancharoen, 2023). However, it also adds to the debt burden of Bangkok which owns the line and has to repay the loan to JICA. During the fiscal year of 2020, coinciding with the onset of the pandemic of disease (COVID-19), the metropolis initially anticipated revenue of THB 83 billion (around \$2.55 billion) but ultimately collected only approximately

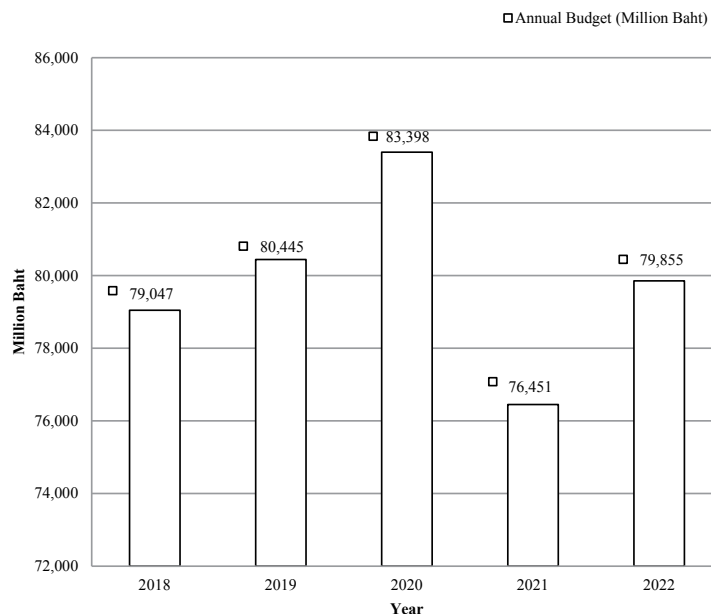


Figure 1 Annual budget

Adapted from Thairath Online (2022). Bangkok's 2022 budget of 79,855 million baht: What is it used for? <https://www.thairath.co.th/news/politic/2365257>

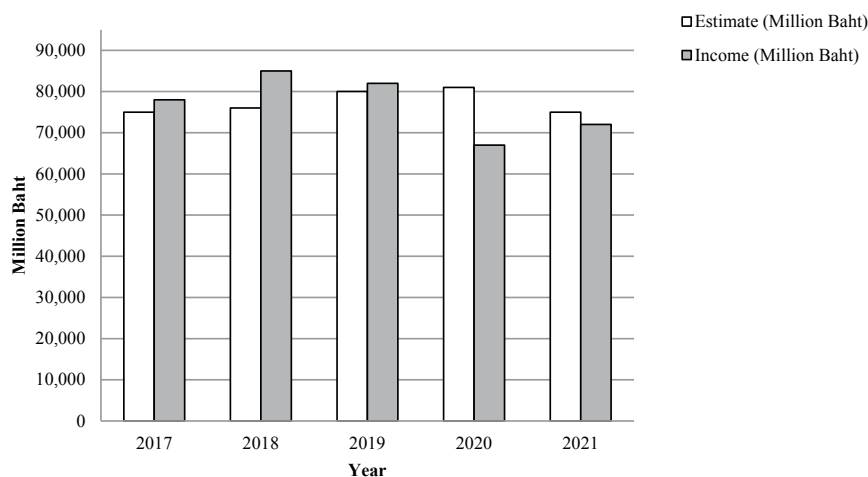


Figure 2 Summarizes Bangkok's revenue from 2017 to 2021.

Adapted from Thairath Online (2022). Bangkok's 2022 budget of 79,855 million baht: What is it used for? <https://www.thairath.co.th/news/politic/2365257>

THB 67 billion (translating to \$2.03 billion) (Strategy and Evaluation Department, 2020). In the following fiscal year, 2021, the city recorded revenue of approximately THB 72 billion (around \$2.18 billion), falling short of its target by THB 5 billion (roughly \$150 million) (Isranews, 2022). However, the 2022 fiscal year saw Bangkok's total revenue rebound to approximately THB 80 billion (comparable to \$2.42 billion). The massive debt of the BTS Green Line extension has ignited controversy despite Bangkok's attempts to manage its finances. Tensions have escalated as the financially strapped BTS system publicly voiced its concerns about outstanding payments from Bangkok. The threat of service disruptions looms large, with the BTS threatening to shut down operations until payments are received (Nick, 2021). In September 2021, BTS sued Bangkok, and its subsidiary, Krungthep Thanakom Co., Ltd., seeking compensation for two main issues: operating the Green Line extension (THB 12 billion, or roughly \$360 million) and installing the train operating system (additional THB 20 billion or comparable to \$600 million) (The Nation, 2023). In September 2022, the Central Administrative Court ruled in BTS's favor and ordered the city to pay THB 12 billion plus interest within 180 days. However, this ruling covers only a portion of the outstanding debt related to the Green Line extensions, which currently stands at approximately THB 40 billion (\$1.21 billion) (Post Reporters, 2023). The case is ongoing and under review by the Supreme Administrative Court (Bangkokbiznews, 2023). While the initial surplus revenue might have suggested Bangkok could quickly settle its debt with BTS, a closer look reveals a more complex picture. The city had anticipated

expenses of THB 79 billion (roughly \$2.39 billion), leaving little room for discretionary spending. Over 65 percent of these expenses were non-negotiable fixed and structured costs like salaries, leaving only THB 1 billion (around \$30 million) after essential expenses. Even at a zero-interest rate, settling the debt with BTS with this remaining balance would have taken Bangkok at least 40 years. This highlights the city's intricate financial situation and the critical need for strategic planning to manage both revenue and expenditure effectively. Therefore, finding viable solutions to Bangkok's debt crisis remains crucial for its continued functioning and financial stability.

Apart from the Regulations of Public Debt Policy and Supervision Committee on Loaning Money Rules for Local Administrative Organization B.E. 2561 (2018), no other legal principles are practical guidelines for local administrative organization debt management. Although Thailand has The Public Debt Management Act B.E. 2548 (2005), it does not include the debt management of the local sector. For paying debts by disbursing the annual government statement of expenditure to the creditors, it must be approved by the parliament and legislated as the annual government expenditure of that fiscal year. This approach takes many steps and is a complicated process, causing damage to the creditors if it does not receive the expenditure for paying debts, partial payment, or delayed payment. It is unfair to the creditors because justice delayed is justice denied.

Based on the comparative law, Chapter 9 of the U.S. Bankruptcy Code, 11 U.S.C. § 901 et seq., having the main objective of protecting the municipality which is

facing the financial problem, can adjust the debt structure by receiving protection from creditors' pressing the payment during the process of improving and negotiating the debt restructuring plan. Thus, Chapter 9 is one of the essential tools for the insolvent municipality.

The researcher compared the US Bankruptcy Laws, especially Chapter 9 of the U.S. Bankruptcy Code, 11 U.S.C. § 901 et seq., presenting the overall image of significant debt restructuring characteristics and results. This comparison led to the suggestions of measurement in finding solutions when Bangkok Metropolitan Administration faces the debt problem. The researcher focused on the application process in the form of comparison based on the legal theories, which is not opposed to the Thai governing structure.

Literature Review

In approaches to finding measures to solve the financial obligations of government departments as local administrative organizations, the researchers investigated academic documents, articles, and laws before analyzing and comparing them to the US Bankruptcy Code, which led to solutions when Bangkok Metropolitan Administration faced the debt problem.

Legal Framework for A State Agency's Debt Management: Overview of Relevant Laws and Regulations.

Under its own legal framework, Bangkok Metropolitan Administration operates as a separate local government organization with its own legal standing (The Bangkok Metropolitan Administrative Organization Act 1985, Section 6) as an autonomous legal entity, Bangkok Metropolitan Administration possesses its very own rights and obligations. As with other legal entities, it can act as a creditor, pursuing claims and demanding performance from debtors (Thai Civil and Commercial Code, 1992, Sections 66 and 194). In exercising their rights, prosecutorial organization is typically assigned to assist state agencies in legal matters (The Organization of Prosecution and Prosecutors Act, 2010, Section 14 (3)) and is mandatorily required to represent them in court proceedings (The Regulation of the Official Prime Minister for Consideration to Adjudge the Dispute Resolution between Public Departments and Proceedings, 2018, Clause 21, Paragraph 1), including Bangkok Metropolitan Administration (The first author, in his capacity as a public prosecutor, previously represented the Bangkok Metropolitan Administration in a court

proceeding.). However, beyond this essential support, the Metropolis receives no further legal assistance or advantages. Bangkok Metropolitan Administration is treated equally in court, subject to the same legal standards and procedures as other litigants. Contrary to popular belief, state-initiated legal actions, including civil cases, are subject to stricter regulations. Bangkok is endowed with distinct obligations to provide essential public services, and these obligations encompass a wide array of public services, ranging from public safety keeping, infrastructure development, slum management, environmental management initiatives, and social welfare programs (The Bangkok Metropolitan Administrative Organization Act 1985, Sections 89 and 93). Bangkok is empowered to undertake various modalities to fulfill these obligations. It may, through its governor or its public servants, choose to directly administer and operate public services, forge partnerships and collaborations with other entities, establish specialized organizations dedicated to service provision or delegate certain functions to private sector entities acting on its behalf (The Bangkok Metropolitan Administrative Organization Act 1985, Sections 95 and 96). Although not primarily focused on business objectives, engaging in activities such as providing public services can lead to the accumulation of debts. Again, as with any legal entity, the Bangkok Metropolitan Administration is entitled to incur debt. No legal provisions, either in the Bangkok Statute or Civil and Commercial Code, exempt Bangkok from servicing its debts. Bangkok's assets are classified as state estates, making them immune to seizure and outside the scope of debt collection through legal processes (The Supreme Court, 2010, Decision Number 7461.). This legal protection extends to preventing unauthorized acquisition using, purchasing or gaining ownership by possession (Thai Civil and Commercial Code, 1992, Sections 1305–1307). While the Constitution (The Constitution of the Kingdom of Thailand B.E. 2560, [2017], Section 250 Paragraph 4), Bangkok statute (The Bangkok Metropolitan Administrative Organization Act B.E. 2528, [1985], Section 122), the law regarding State Fiscal and Financial Disciplines The State Fiscal and Financial Disciplines Act B.E. 2561 [2018], Section 64) and the law regarding Local Administration Organization Empowerment (The Local Administration Organization Empowerment Act B.E. 2542, [1999] Section 30 (5)), all guarantee that Bangkok, as a self-governing local entity, receives sufficient subsidies from the Thai government and is entitled to generate income through various channels, including local taxes and service fees. The procurement of external funds through borrowing

or loans may be considered as a viable option (The Bangkok Metropolis Administrative Organization Act B.E. 2528, [1985], Section 117). The primary legal framework governing borrowing, management, and repayment of public debt in Thailand, The Public Debt Management Act B.E. 2548 (2005), aims to address the surge in debt from recent crises and tighten control by consolidating fragmented regulations and centralizing oversight under a single agency. This comprehensive reform will ensure responsible debt management, promoting Thailand's financial health (The Public Debt Management Act B.E. 2548, 2005). As defined by the law, "Public Debt" includes government's, state-owned enterprises and public organization's debts, as well as government-guaranteed debts, but specifically excludes local government units' debt (Public Debt Management Act, B.E. 2548, [2005], Section 4). While local government organizations are treated as state agencies under budgetary procedure laws (The Budgetary Procedures Act, B.E. 2561 [2018], Section 4(6)) their debts are not classified as public debt, creating a discrepancy as their management, borrowing, and repayment fall outside the reign of the public debt management law.

Despite being excluded from the public debt management law, local government borrowing is regulated by a rule established by the "Committee Regarding the Criteria for Borrowing by Local Government Organizations," appointed under the public debt management statute. Approved by the Cabinet in 2018, this rule strictly limits loan-taking by local governments, including Bangkok Metropolitan Administration, by restricting it to specific, pre-defined purposes. The loan amount must not exceed 10 percent of the respective organization's average revenue. Any loans taken by local authorities are their sole responsibility, and the central government won't be liable in case of default. Neither will the government act as a guarantor for these loans nor allocate funds for repayment in the event of default (The Regulation of the Policy and Public Debt Management Committee Regarding the Criteria for Borrowing by Local Government Organizations B.E. 2561 [2018], Clauses 7, 11, 15, and 16).

Under Thai law, creditors can seek remedies against debtors. (The Civil and Commercial Code, 1992, Section 194 and Section 203). Alternatively, creditors are entitled to petition for their insolvent debtors' bankruptcy under certain condition, the Bankruptcy Act B.E. 2483 which comprises three bankruptcy procedures: bankruptcy (liquidation), corporate reorganization, and small and medium-enterprise reorganization.

Corporate Reorganization has been added to the

existing Bankruptcy statute amidst the financial crisis added by the Bankruptcy Act (No. 5), A.D. 1998. (See the reason of the enactment of the Bankruptcy Act (No. 5) 2541). The Thai version of reorganization process shares some similarities with Chapter 11 of the U.S. Bankruptcy Code, can be conducted either voluntarily or involuntarily, viz if (1) a debtor is insolvent or unable to repay debt in due time; (2) a debtor owes at least THB 10 million to one or more creditors, and (3) there is a reasonable reason for reorganizing the debtor's business, where the debtor may be able to restructure their debt under the bankruptcy court's and official receivers' supervisions and guidance. Upon the court's acceptance of the petition, an "automatic stay" takes effect, temporarily halting all lawsuits, judgments, and other civil actions against the debtor. If the court approves a reorganization order, a plan preparer will be appointed, and they will assume the role as the debtor's executive. The debtor's executives lose their power to manage the business and property. The plan preparer's primary duty, as its name suggests, is to prepare a reorganization plan. They act in the debtors' shoes until the court approves the plan. Upon the court's approval, the reorganization plan becomes legally binding on all involved parties. Pre-debts are forgiven, except for those specifically identified in the reorganization plan. Upon successful execution of the plan, and with the court's approval, the reorganization process concludes, allowing the debtor to emerge from bankruptcy. Under the successful implementation of the plan, the law required that creditors will be guaranteed payments that are at least as advantageous as those they would receive in a bankruptcy scenario (Bankruptcy Act, B.E. 2483 [1940], Sections 90/3, 90/12, 90/20, 90/23, 90/25, 90/58(3), 90/60, 90/70).

Regarding the insolvency of local government organizations, a Supreme Court precedent established that they cannot be declared bankrupt (The Supreme Court, 2017, Decision No. 5969/2016). It also seems unlikely that local government bodies would qualify for the reorganization procedure, given their exclusion from the legal definition of eligible entities (Bankruptcy Act, B.E. 2483 [1940], Section 90/1, "debtor").

In the U.S., the Constitution empowers Congress to enact uniform laws for nationwide bankruptcy procedures (US Senate, 1787, Article 1, Section 8, Clause 4). Federal bankruptcy law reigns supreme, superseding any conflicting state laws. This national uniformity underscores its crucial role within the U.S. legal framework. The current bankruptcy law, Title 11 of the U.S. Code ("Bankruptcy Code"), outlines the legal framework for proceedings. It covers various aspects,

including types of bankruptcy. Among these, Chapters 7 (Liquidation), 11 (Reorganization), and 13 (Individual Debt Adjustment) are widely known and analyzed due to their prevalence and significance.

Chapter 9, officially titled “Adjustment of Debts of a Municipality,” or “Municipal Bankruptcy,” addresses financial distress faced by municipalities. To illustrate the workings of Chapter 9 procedures, let’s consider Municipality A as an example (Kimhi, O. 2010). When Insolvent Municipality A files a petition for Chapter 9 protection, an automatic stay is triggered. This essentially prevents creditors from pursuing debt collection, giving the municipality breathing room to navigate its financial challenges and seek a path toward debt adjustment and reorganization. During this period, Municipality A can engage in negotiations with its creditors. If these negotiations are successful, the municipality can successfully emerge from the bankruptcy proceedings. On the other hand, it may attempt to implement a debt readjustment plan even if creditors object, commonly referred to as a “cram down.” When the Bankruptcy Court approves the plan, all pre-petitioned debts, except those specifically mentioned in the plan itself, are discharged.

Article Review

Despite the complexities of decentralization in Thailand, the importance of local governance remains widely acknowledged. Siripanyo et al. (2021) pointed out that local governments play a crucial role in managing social inequality due to their proximity to citizens and understanding of their challenges. Importantly, these bodies bear responsibility for citizens’ well-being throughout their lives (Siripanyo et al., 2021). While non-commercial in nature, public services can incur substantial debts, sometimes to a significant degree. Nantharath et al. (2020) linked rapid budget increases during political transitions in metropolis governments to stalled public investment at the local level. This insufficient spending also hampered growth in manufacturing, construction, and real estate, contributing to fiscal imbalances and development gaps in the Thai economy (Nantharath et al., 2020).

Many municipalities in Thailand heavily rely on government allocations while simultaneously generating limited income from service fees and local taxes, resulting in low overall fiscal capacity, particularly for larger municipalities burdened by extensive service demands.

Promsan (2013) echoed these concerns, highlighting that the government allocations might be insufficient to support growing local needs. This necessitates exploring

alternative funding sources, such as external loans, to bridge the gap between revenue and expenses (Promsan, 2013). Singhasri (2015) concluded that subsidies to local governments act as hidden public debt, as they are not fully accounted for in official figures. This underestimates the actual indebtedness of local authorities, potentially impacting the country’s future fiscal health (Singhasri, 2015).

Case Studies: Financial Challenges Faced by Thai State Agencies.

Nam Kam subdistrict municipality

Nam Kam Subdistrict Municipality (“Nam Kam”), formerly a Subdistrict Administrative Organization within Thailand’s northeastern Nakhon Phanom province, recently gained municipality status. In late 2004, Nam Kam secured a THB 14 million loan (approximately \$400,000) from Krung Thai Bank, responsibly meeting its debt obligations initially. However, in 2012, the Council of State ruled that the borrowing lacked legal authority due to missing subdistrict regulations, leaving the guarantors (including the former Chief District Officer, the former Tambol Administration Organization Permanent Secretary, and financial officer) jointly responsible for the debt. Despite this, the bank urged Nam Kam to acknowledge the debt. The newly elected Chief reluctantly complied and referred the case to the Ministry of Interior for resolution (Krueathep, 2020). The legal dispute ultimately led Krung Thai Bank to petition for Nam Kam’s bankruptcy. However, the Supreme Court ruled in favor of the subdistrict, confirming the bank’s lack of authority to trigger bankruptcy proceedings against a state agency (The Supreme Court, 2017, Decision No. 5969/2016). Uttabolyukol and Sophonpirom (2022) contend the Supreme Court misconstrued existing legal provisions in this case. They argue that, as independent legal entities, state agencies like Nam Kam should be eligible to be subject to bankruptcy proceedings like any other entity. They suggest the Central Bankruptcy Court’s rationales to dismiss the case on the grounds of futility could have been sufficient, without denying the agency’s potential eligibility for bankruptcy. Additionally, they further note that the Reorganization Procedure, intended for private entities and certain state-owned enterprises, is not available for state agencies like Nam Kam due to their distinct legal standing. This renders pursuing reorganization through this process impractical and legally prohibited (Uttabolyukol & Sophonpirom, 2022).

Thai Airways International Public Company Limited

Thai Airways International Public Company Limited soared into existence in 1960. Initially, Thai Airways was founded as a joint venture between Thailand's domestic carrier, Thai Airways Company, and the Scandinavian Airlines System (SAS) (CAPA center for aviation, 2024). Thai Airways International Public Company Limited began experiencing significant debt issues in 2008, primarily due to rising oil prices, internal political instability, and the global economic slowdown. These factors led to continuous financial losses for the airline. By the end of 2019, the COVID-19 outbreak further exacerbated the situation, drastically reducing travel demand and severely impacting the national economy, the aviation industry, and the tourism sector (Chokanan, 2020). This economic downturn resulted in substantial debt accumulation, financial instability, and an urgent liquidity crisis, making it impossible for the company to meet its obligations. At that time, the company's debt had reached THB 349 billion (approximately \$10.6 billion), the largest in its history, with defaults on loans and bonds. Furthermore, potential corruption and excessive overtime costs placed additional strain on its finances (Khaliq, 2020). Given these challenges, the authors strongly believe that bankruptcy should always be the last resort for any entity facing financial difficulties. It should only be considered once all other alternatives have been explored. This aligns with Thai Airways' efforts to explore various debt management options before resorting to bankruptcy. With government support, the company filed a petition with the Central Bankruptcy Court to initiate the reorganization process. On September 14, 2020, the court issued an order for business rehabilitation. The Central Bankruptcy Court has considered and concluded that if Thai Airways undergoes debt restructuring, organizational changes, and management improvements under the business reorganization plan according to the Bankruptcy Act, the company will be able to continue operations. This approach would also allow Thai Airways to generate enough revenue to repay its creditors fairly, while preserving many employee jobs—an outcome preferable to bankruptcy (Central Bankruptcy Court, 2020, Red Case No. Ff 20/2563).

Methodology

This research employs a documentary research methodology, focusing on the systematic analysis of secondary data from non-personal sources, including academic publications, government reports, and official documents. The study investigates Bangkok's public

debt management through a comparative analysis of the debt restructuring mechanisms outlined in Chapter 9 of the US Bankruptcy Code and the framework for local administrative organizations in Thailand. Relevant data were collected from diverse sources, primarily government reports and academic publications. The analysis first employed descriptive analytics to outline Bangkok's debt management practices, followed by diagnostic analysis to evaluate their effectiveness in comparison with the US bankruptcy framework. This approach aimed to generate actionable recommendations for enhancing debt management within Thai local governments.

Analysis and Discussion

Legal Issues in Bangkok's Debt Management.

The COVID-19 pandemic and the BTS Green Line extension, among others, have severely strained Bangkok's finances. Current legal frameworks protect state agencies' assets, including those of local government organizations like Bangkok Metropolitan Administration, from seizure. Additionally, Supreme Court precedent prohibits the declaration of bankruptcy for state agencies. These protections create challenges for debt recovery. While creditors can take state agencies to court, and even if the court rules in their favor, they lack the means to fully execute judgments, raising questions about the incentives for debt repayment. However, the state agency cannot even contemplate the possibility of escaping its debt obligations. To do so would trigger a domino effect with catastrophic consequences. Taking Bangkok Metropolitan Administration as an example: Firstly, defaulting on its debt would irreparably damage Bangkok's reputation. This would leave the city vulnerable to external intervention, similar to the situation that arose when the BTS threatened to shut down its services. Without such a critical transportation artery, the metropolis would be left paralyzed, severely impacting the lives of its citizens. Additionally, other service providers might lose confidence in Bangkok's financial stability, potentially leading them to follow suit and discontinue their services, further crippling the city. Secondly, as a public organization established by law, Bangkok is responsible for being a role model for legal compliance. The cabinet has clearly articulated that it is the state's obligation to follow the laws and rules, including fulfilling its financial and contractual commitments. Bangkok is no exception to this rule

(Mamont, 2014). Further, defaulting would not only breach this legal duty but could also lead to disciplinary actions against executive staff or administrative fines (The Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 [1999], Section 75/4, para. 1). Thirdly, the legal framework itself provides no escape for Bangkok. Its existence and purpose are stipulated by law, and its dissolution can only occur through the same legal channels. Defaulting does not offer a loophole in this regard. Finally, creditors still possess alternative avenues to pursue their claims. For example, legal provisions allow Bangkok's creditors to directly demand payment from Bangkok's debtors, bypassing the city itself (Thai Civil and Commercial Code, 1992, Sections 233–236). Additionally, an arbitral tribunal can render an award against Bangkok, thanks to the New York Convention (United Nations, 1958), to which Thailand is a party (Thailand acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards on December 19, 1959.). The arbitral award can be enforced worldwide. Consequently, if Bangkok, or Thailand, has assets outside of Thailand, those assets are not immune from seizure in foreign countries. The authorities in the respective jurisdictions might recognize and enforce the arbitral award, potentially leading to the fulfillment of Bangkok's financial obligation ("In the past, an arbitral tribunal issued an award against a Thai state agency, requiring the department to repay the debt owed to the claimant in the arbitration proceedings. While the department's assets within Thailand were immune from seizure, the claimant successfully sought enforcement of the award against a Thai state agency asset located in a foreign country.). Presently, Bangkok faces five potential options to address its financial challenges: obtaining a loan, issuing bonds, securing government budget allocations, negotiating with creditors, and restructuring. The option of obtaining a loan is deemed highly impractical due to Bangkok's current state of over-indebtedness. Private banks, both domestic and international, as well as foreign governments, are hesitant to extend substantial funds given the lack of government guarantees, as Bangkok's debt is not classified as public debt. Additionally, stringent regulations set by the Committee on Public Debt dictate that local governments cannot borrow more than 10 percent of their revenue. Because Bangkok's debt exceeds this threshold, any potential loans might be insufficient to repay the existing debt fully. Additionally, Bangkok can only obtain loans with the approval of the Bangkok Metropolitan Administration Council, as mandated by law (The Bangkok Metropolitan Administrative Organization

Act, B.E. 2528 [1985], Section 117(8)). With the negative precedent set by the "Nam Kam" incident where individual staff were held liable for exceeding borrowing limitations, securing council approval for further loans proves exceptionally difficult. Furthermore, even if a loan were secured, it would not be a long-term solution. While a loan might temporarily address immediate needs, the additional burden of interest payments would ultimately exacerbate Bangkok's existing financial challenges. Issuing bonds also presents significant challenges. There was no precedent that local government bodies in Thailand have ever issued bonds, creating uncertainty and potentially limiting investor confidence. Furthermore, while issuing bonds might offer a temporary reprieve, it would ultimately add to the city's long-term debt burden, further exacerbating its financial woes. Securing appropriate budget allocations from the government is similarly unfeasible. Despite constitutional and legal guarantees, revenue sources consistently fall short of Bangkok's needs. Moreover, providing sufficient funds for Bangkok could set a precedent that other financially strained local governments might exploit. When a debtor cannot repay its debts as scheduled, negotiation naturally follows. However, this option may not be suitable for Bangkok, especially regarding a major creditor like BTS. Unlike smaller debts, which Bangkok could potentially offset with its nearly THB 1 billion annual surplus, managing a large debt through out-of-court negotiation poses significant challenges. Convincing creditors to accept Bangkok's commitments after a default is difficult. Furthermore, during negotiations, Bangkok would need to offer concessions. Requesting additional time, although superficially appealing, results in increased interest accrual and creditors would likely demand immediate full or substantial partial payment, a requirement that Bangkok would likely struggle to meet.

Comparing the Restructuring between Bangkok and Other Entities.

In Bangkok, restructuring—both organizational and debt restructuring—is likewise forbidden by law. The possibility of success decreases with the amount of debt since debt restructuring requires talks with creditors, even with the help of knowledgeable, impartial third parties like mediators or conciliators. For example, Thai Airways was able to classify its debts as public debt and even received full support from the government at the time, but it was ultimately unable to come to a settlement with its creditors. Consider comparing it with Nam Kam Municipality. Firstly, the sheer scale of Bangkok's

responsibilities dwarfs those of Nam Kam. Comparing their debt burdens, therefore, becomes an exercise in futility. While Nam Kam's debt of THB 14 million might seem substantial for a remote area, it pales compared to Bangkok's mountainous debt. Secondly, the legal frameworks surrounding their respective borrowings differ significantly. Nam Kam's debt was deemed illegal due to a regulatory gap at the time, effectively rendering the borrowing not binding on the municipality. Contrastingly, Bangkok's debt was incurred entirely within the existing legal framework, eliminating any comparisons based on the legality of their financial actions. While Bangkok and Thai Airways currently face the challenge of managing significant debt burdens with limited ability to repay them in the foreseeable future, fundamental differences exist between them. First of all, the distinction in their debt classification carries significant weight. Unlike Thai Airways, whose debt was considered part of the public debt due to its previous status as a state-owned enterprise, Bangkok's debt remains separate and distinct. This distinction has far-reaching implications for their options for managing and restructuring their debt. The Thai government, for instance, might possess greater flexibility, or a heavier burden, in intervening or assisting with Thai Airways' debt due to its classification under public debt. On the other hand, Bangkok, a local government organization with separate debt, faces different constraints and may require alternative approaches for managing its financial challenges without the government's help. Additionally, the nature and origin of their debts diverge significantly. Thai Airways' debt might be attributed to factors like internal mismanagement or intense industry competition, factors often associated with profit-driven commercial enterprises. In contrast, Bangkok's debt primarily arises from fulfilling its obligations as a public service provider, including essential services like infrastructure maintenance, public transportation, and social welfare programs. The inherent difference in the purpose behind their debts necessitates unique approaches to managing and potentially restructuring them. Additionally, since Bangkok has never issued bonds, unlike Thai Airways, which has already defaulted on its bond issuance, the possibility of bond defaults for Bangkok is eliminated. Finally, the legal avenues available for debt restructuring also diverge significantly. Both Thai Airways and Thai Smile, as they were state-owned enterprises operating in the forms of a public company and a private company, respectively, were eligible for the reorganization procedures outlined in Thai bankruptcy law. Conversely, as a local government organization, Bangkok is not

eligible for this type of protection, so recognizing the unique characteristics and legal frameworks governing each case is crucial for developing effective and sustainable solutions for Bangkok's specific financial challenges.

Results

Without viable legal options specifically tailored to address local government insolvency, researchers have advocated for considering the Chapter 9 of the US Bankruptcy Code's process as a potential solution. Despite differing political structures between the United States and Thailand, both nations share a common goal of decentralization. This decentralization aims to empower local governments to play a more active role in serving their citizens. While public services may not inherently serve a business purpose, they often involve accumulating debt, sometimes to a significant extent, as evidenced by the financial challenges faced by Bangkok Metropolitan Administration.

Chapter 9 bankruptcy offers several advantages, including an automatic stay that provides breathing room for the debtor and the ability to adjust obligations through negotiations or reorganization plans. These concepts are already present in Thai bankruptcy law, demonstrating compatibility with the principles underlying Chapter 9. Besides the good points of that application in having the specific law for the mentioned case, local administrative organizations will have principles and guidelines for organization and debt management with systematic and accurate procedures. 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 Metropolitan Administration 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.

While Chapter 9 offers a framework for municipalities to address financial distress, it does not provide a quick

fix. Its use has been very limited. Compared to its counterpart, Chapter 11, which typically sees around 5,000 cases annually for corporations seeking protection, Chapter 9 filings are relatively infrequent. Since its addition to the federal bankruptcy code in the 1930s, there have been approximately 700 filings under Chapter 9. The most recent instances consisted of 1 case in 2022 and 2 cases in 2023, respectively (Nuveen, 2023).

Several factors contribute to the rarity of Chapter 9 filings, including the stringent conditions for petitioning under Chapter 9. Specifically, municipalities must be insolvent, Chapter 9 protection must be voluntary on the part of the municipality, and the state law of the municipality's origin must allow municipalities to utilize Chapter 9 protection. In addition to the legal conditions, other vital factors also contribute to its rarity such as Bankruptcy Court's limited power, the absence of a trustee appointment (Buccola, 2019), the significant costs associated with the proceedings, the potential negative response from the credit market leading to rating downgrades, and the lasting stigma that can be attached to the municipality (Knox, J., Levinson, M., & Brennan, D. S., 2009). A notable concern surrounding Chapter 9 bankruptcies is their potential correlation with population decline. Studies have shown that roughly half of the municipalities that underwent Chapter 9 proceedings experienced a population decrease exceeding 25 percent compared to their population levels fifty years earlier (Buccola, 2019).

These disadvantages would not apply to Bangkok. First, potential adverse reactions from the credit market are irrelevant, as no local government bodies in Thailand, including Bangkok, have a history of issuing bonds. Additionally, the high costs associated with US Chapter 9 proceedings are not a factor, as the prosecution organization is legally obligated to provide free services to state agencies, including Bangkok. Moreover, concerns regarding stigma or population decline hold less weight in the metropolis' case due to its unique status as the capital city and the nation's economic and governmental center. Furthermore, unlike its US counterpart, the current Thai corporate reorganization procedure allows debtors to seek protection even if they are not demonstrably insolvent. Merely unable to repay their debts in timely manner is sufficient to fulfill the legal requirement. If Chapter 9 of the US Bankruptcy Code were adopted in Thailand, the Thai version's requirement should align with the current practice, effectively eliminating the more restrictive requirement in the US system. Thailand also possesses a specialized infrastructure for handling reorganization procedures. Both bankruptcy judges and official receivers

are government officers with extensive experience, having been familiar with the process since the inception of the Thai reorganization law. If Chapter 9 were to adopt into the existing Bankruptcy law, the newly enactment should fall under the jurisdictions of bankruptcy judges and official receivers. Since Chapter 9 closely resembles Chapter 11 and considering Thailand's successful adoption of Chapter 11 with minimal modifications, implementing Chapter 9 is likely to be a smooth process.

When considering the standard criteria widely used to start the bankruptcy process: financial liquidity, cash flow, or stop paying (United Nations Commission on International Trade Law, 2004). The facts appeared that Bangkok Metropolitan Administration had stopped paying the debt to the creditor (BTSC) since May 2019, leading to two letters from the creditor asking for payment dated 18 September 2020 and 15 January 2021. However, Bangkok Metropolitan Administration has remained inactive to pay off. It reasoned that it wanted to pay debts to comply with the law and contract requirements, but it could not because the Bangkok Metropolitan Council (BMC) did not approve the budget. The council gave the reasons that Bangkok Metropolitan Administration 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 Metropolitan Administration cannot bring the fare to pay the expenses for project implementation. (The Judgment of Central Administrative Court: Red Case No. 1926/2022). Stopping paying debts reflects the financial difficulties of Bangkok Metropolitan Administration. It can be presumed that Bangkok Metropolitan Administration is insolvent (Bankruptcy Act, B.E. 2483 [1940], Section 8) or unable to pay debts, eligible for using rights to file a petition for organization and property management under Chapter 9.

Conclusion and Recommendation

Conclusion

Bangkok facing significant financial challenges, has created a critical situation requiring innovative solutions. Typical solutions like government intervention, taking loans, bond issuance, negotiating with creditors, or restructuring face limitations in Thailand. Therefore, exploring alternative approaches, like Chapter 9 bankruptcy, becomes crucial.

Chapter 9, while seemingly unconventional at first glance, presents interesting possibilities for financial-

distressed local government organizations in Thailand, including Bangkok. Thailand's existing bankruptcy framework already incorporates reorganization procedures akin to Chapter 11. Integrating the municipality reorganization principles would not be a radical change but rather an adaptation of existing practices. Moreover, its automatic stay provision offers a crucial advantage by providing local self-governed organizations with breathing room to negotiate debt restructuring plans with creditors, aided by neutral specialized arbiters like bankruptcy judges and official receivers. Regardless of the negotiation outcome, the court retains the authority to "cram down" and approve the plan even if not all creditors agree. Adapting Chapter 9 principles to the Thai context and local government structure could be a viable solution for Bangkok's specific situation.

Recommendation

The study shows that Thailand lacks the measures and solutions to the debt problem for the debtor: local administrative organization. Thus, Chapter 9 of the United States Bankruptcy Code should be applied as an example to consider and compare to find the solutions. However, this application should be considered based on the different management between Thai and US local Administrative Organizations.

Chapter 9 has been enacted since 1937 and used for the debt management of the municipality by applying the reorganization and debt restructuring plans from rehabilitation law to be enforced *mutatis mutandis*. It affects the business and asset management by operating systematically and having a precise period of operation. (US Code, Title 11, Chapter 9, rev.2013, § 901). This law can help the municipality ask for protection from the Court in case of a financial crisis. Moreover, during the debt restructuring plan, the municipality can continue operating its fundamental affairs for public services. When considering the government structure of Bangkok Metropolis as the debtor, there is no difference or disadvantage to applying the debt management process under Chapter 9.

In presenting the legal measures to improve the business rehabilitation process for local government organizations within the framework of the Thai Bankruptcy Act, B.E. 2483 [1940], the principles of Chapter 9 must be amended and incorporated to effectively address the debt administration and management problems of local government organizations. The information is as follows:

2.1 Amend the Thai Bankruptcy Act, B.E. 2483 [1940], to incorporate Chapter 9 principles.

2.2 Align with existing reorganization procedures by eliminating the requirement for local governments to be insolvent. Instead, they should demonstrate their inability to repay debt in a timely manner.

2.3 The Bankruptcy Court will retain its status as the sole discretionary decider, having absolute power to approve or deny petitions and sanction restructuring plans.

2.4 Leverage the expertise of bankruptcy judges and official receivers, who specialize in handling business and property management within the bankruptcy framework. They will oversee the local government units' property and debt supervision.

2.5 Prohibit the Central Bankruptcy Court and official receivers from making policy decisions or allocating spending on behalf of the local government units. These responsibilities will remain solely with the local government organizations administrators.

2.6 Unlike in standard bankruptcy proceedings, the Central Bankruptcy Court would not be authorized to order the liquidation or sale of the local government organizations' assets.

The authors believe that applying the principles of Chapter 9, as outlined in the U.S. Bankruptcy Code, to manage the debts and assets of local government organizations in Thailand would be beneficial for both creditors and debtors. In the past, Thailand has adopted Chapter 11 from the U.S. Bankruptcy Code into the Thai Bankruptcy Act, B.E. 2483 [1940], to provide an alternative method for debt management outside of the Civil and Commercial Code and Civil Procedure Code. Because of this, using the rules of Chapter 9, which is another part of the U.S. Bankruptcy Code, for local government groups would be a good way to help them solve their debt problems.

Conflict of Interest

The authors declare that there is no conflict of interest.

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