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KEY WORD: INSOLVENCY / BANKRUPTCY

PHOJ KHOMANANT : OTHER GROUNDS NOT JUSTIFYING THE
ADJUDICATION OF THE DEBTOR AS A BANKRUPT. THESIS ADVISOR :
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Other grounds not justifying the adjudication of a debtor as a bankrupt are provided in Section 14 of the Bankruptcy Act B.E. 2483, which the Court applies in dismissing bankruptcy cases. Although in some cases the Petitioning Creditor may adduce evidence to prove the assumptions of the law under Section 8 of the Bankruptcy Act B.E. 2483 and the the Petitioning Creditor's evidence are admissible that the debtors are insolvent, if the Court considers that there are other grounds not justifying the adjudication of the debtors as bankrupt, the Court may dismiss such cases. Such grounds can be any grounds that appear justifiable to the Court during trial. The Court may cite any grounds or circumstances in the case files to justify the dismissal of the cases. If the Court thinks fit, it is within his absolute discretion to decide whether the debtors should be adjudicated bankrupt.

This research is a study of the developments, concepts and purposes of the Bankruptcy Law, including the principles of law on other justifiable grounds for not adjudicating a debtor bankrupt. A comparative analysis of the discretion of Thai courts and English courts was carried out, based on legal precedents, in order to establish clear procedures for the court to exercise his discretion within the scope of the law. The purposes of the Bankruptcy Law are the fundamental principles that prevent an exercise of capricious power and a wrongful conduct of the court, which will lead to further amendment of the Law for clarity.

Our study shows that currently there are no precise rules about other justifiable grounds for not adjudicating a debtor bankrupt in Thai Courts. Consequently, the application of the law on this issue does not serve its purposes. Persecution and discrimination of insolvent debtors may cause the petitioning creditors to believe that they do not get fair treatment, and the public may get into trouble because an insolvent debtor sued in a bankruptcy case that was dismissed on other grounds not justifying the adjudication of the debtor as a bankrupt will have opportunities to further incur debts which he cannot pay. Then, the debtor is sued time and again. Thus, some guidelines for solving the problems are offered in this thesis, as follows:

1. Judgements of both the Thai and English courts, including rules and principles of laws on other justifiable grounds for not adjudicating a debtor bankrupt, should be compiled for an analytical study of this issue, in order to define the rules and the scope thereof.

2. The Law should establish measures for publishing judgements of bankruptcy cases that are dismissed by the Court on other grounds not justifying the adjudication of the debtors as bankrupt.

3. It is appropriate to amend Section 14 of the Bankruptcy Act B.E. 2483 in order to clearly establish rules about other justifiable grounds for not adjudicating a debtor bankrupt. In addition, the definitions of "insolvent debtor" and "other justifiable grounds for adjudicating a debtor bankrupt" should be added to Section 6.