

## 4186157334 : MAJOR LAW

KEY WORD: SECURED CREDITOR / REORGANIZATION

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BARAMEEAUYYCHAI ; 198 pp. ISBN 974-17-0511-5.

The business reorganization law has been provided as an aid to debtors facing financial problems so that they may continue their business without going bankrupt. For this purpose, there must be measures favorable to success in the reorganization and they are obliged to produce a great effect on creditors' rights, especially the rights of a secured creditor, such as, an automatic stay. As a result, the secured creditor becomes unable to enforce compulsory performance against the collateral, etc. The best way out is that if these measures are obliged to affect the rights of the creditors especially a secured creditor then they must at the same time also protect the secured creditor's rights adequately. The objective of this research is to study the measures under the business reorganization law which affect the rights of a secured creditor under Thai and international laws, including the protection which the secured creditor derives from these laws, in order to find appropriate guidelines for a balance between the objectives of the business reorganization law and those of the surety law.

Following the study and research, it was found that in the Bankruptcy Act 1940 the provisions protecting a secured creditor's rights in a debtor's reorganization remain inadequate. As a result, the secured creditor may sustain damage and offer no cooperation in the business reorganization, that is:

1. There is no provision for a compensation for the damage sustained by the secured creditor as a result of the failure of adequate protection;

2. There is no clear provision concerning the word "secured debt", thereby resulting in a problem of the classification of the secured creditors in a vote accepting or rejecting the plan;

3. There is no provision for the protection of the secured creditor's rights in the court's approval of the plan in the event the secured creditor does not approve of the plan.

To solve these problems, the Researcher would like to recommend the following guidelines for solution:

1. There should be a compensation for the damage sustained by the secured creditor as a result of the failure of adequate protection: to this, the compensation should be designated as a debt with a preferential right over the debtor's property;

2. The word "secured debt" should be defined as an amount of indebtedness for which collateral has been provided, for the purpose of solving the problem of classification of the secured creditors in a vote accepting or rejecting the plan;

3. There should be an increase in the criteria for the protection of the secured creditor's right in the confirmation of the plan by the court in the event the secured creditor does not agree to the plan, so that the court may perform the duty to examine the reorganization plan as to whether such plan has also provided adequate protection for the secured creditor's rights.