

Abstract

Hearing process and order of absolute receivership is considered as the most essential part of bankruptcy process as it will start the mechanical of bankruptcy process. Under section 14 of Bankruptcy Act B.E. 2483 " In hearing a bankruptcy action on the petition of the creditor , the court must consider the facts prescribed in section 9 or 10 . If the court finds them proved , the court shall order the debtor to be under an absolute receivership ; but , if not proved , or the debtor gives evidence of his ability to pay the debt in full , or if adjudication of the debtor as bankrupt , the court shall dismiss the petition. As to the statement above, it can be seen that hearing process of bankruptcy case has a special characteristic which is different from the general hearing process for instance in hearing process of criminal case the court shall proceed hearing until obtain the fact in the level of beyond reasonable doubt or in the hearing process of the civil case the court shall proceed hearing by weighted on evidence taken by each parties. Under section 14, which is claimed previously, it can be affirmed that Thailand bankruptcy law is based on the principle that the court play a roles as an investigator to investigate insolvency status of debtor before an ordering of absolute receivership

The objective of this thesis is to study roles of court which effect to the hearing process and ordering absolute receivership. Analysis statement on roles & procedures which have been used in the hearing process before ordering of absolute receiverships has been stated within. Additionally, proposed solutions to improve a level of efficiency in hearing process of bankruptcy case have also been stated within this thesis. Comparable method will be used in this thesis and this thesis will focus on comparing role of Thai court and the role of other countries and particular on England, United State of America and France. This is in order to find the most appropriate role of the courts for the bankruptcy case.

Based on study, there are two major roles which are considered as the most important role for the court to make a hearing on bankruptcy case. One is active role i.e. admissibility of evidence, procedure in case of default , recalling of witnesses for

re-examination, the discretion of court about other grounds not justifying the adjudication of a debtor. Another one is passive role i.e. temporarily warrant before judgment, compromise between parties. This kind of role the court will follow through will of each party.

Even the major role of the court will be considered as an active role but there still has problem and difficulty in the hearing process of bankruptcy case. This is because occasionally the court has not change an attitude to comply with authority under the regulation which has been set by the law, additionally, partly of regulation still vague, inconsistency and conflict with the rationales behind the bankruptcy law.

Finally, proposed solution throughout the most appropriate roles of the court in hearing process of the bankruptcy case has been proposed with this thesis and this is intended to make the hearing process of bankruptcy more efficiency.