

AN ABSTRACT

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MANUCHEST ROTJANASIRIBUTR : UNCITRAL MODEL LAW ON CROSS-BORDER
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This thesis is aimed at exploring the UNCITRAL Model Law on Cross-Border Insolvency, with particular emphasis on the recognition of a foreign insolvency proceeding. The study is also extended to the State and court jurisdiction over a cross-border insolvency case, the characteristic and origin of the law relating to cross-border insolvency, and the theory on consequence of insolvency proceeding. Moreover, this study is aimed to analyze the possibility of Thailand adopting this Model Law.

The examination by this thesis reveals that while the Model Law sets out specific rules conjunction with the recognition of a foreign insolvency proceeding that effectively resolve the problems arising from the cross-border insolvency case, no particular law in this instance has been in place in Thailand. In addition, the unsuitable of Articles 177 and 178 of the Thailand Insolvency Act B.E. 2483 which can not deals with the cross-border insolvency case by effectively, affecting to the interested persons of the case that no obtain enough and fair protection, in particular to Thai creditors. All this, indeed, constitutes barriers to international trade and investment and it is not pursuant to Thailand's obligations of free-trading as Thailand has been a member of World Trade Organization (WTO).

This thesis suggests that Thailand should, in effect, have the law relating to cross-border insolvency, to deal with the cross-border insolvency cases, in particular the recognition of foreign insolvency proceeding. This thesis suggests that underlying legal principles as contained in the Model Law be adopted as guidance for the enactment of specific legislation intended to be applicable to the recognition of foreign insolvency proceeding, due to its universal characteristic and no moreover strictly provided. Its promulgation should be separate from the existing law because of the Enacting Law is aimed to play a role in the insolvency cases having a foreign element. This thesis also suggests that the Bankruptcy Court, relating offices and officers should directly be the authority persons of the Enacting Law due to having theirs relate experiences. Finally, the Enacting Law will be the factors of investment promotion from aboard, creating confidence to foreign investors and protection the interests of creditors, debtors, and interested persons involving the cases, to obtain more fair practice and distribution.