

## CHAPTER 2

# THE CASE OF THAILAND INSTITUTIONAL REFORM AND COOPERATE RESTRUCURING IN THAILAND: FROM CRISIS TO RECOVERY

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### 1. INTRODUCTION

It has already been over four years since the currency crisis broke out in Thailand in July 1997. Immediately following the crisis, Thailand implemented economic stabilization policies in accordance with the conditionalities imposed by the International Monetary Fund (IMF). These policies helped the country's foreign exchange reserves recover, the current account turn into the black, and the exchange rate regain stability. However, business activities suffered a larger setback than expected, resulting in an economic contraction. The Thai Ministry of Finance shifted gears, easing the tight monetary policy, and after the economy bottomed out at last in the latter half of 1998, the ministry adopted stimulatory fiscal measures in March 1999 (Supharat [1999:100-105], Higashi [2001b:170-172]). Investment and consumption revived from the latter half of 1999 to the first half of 2000, spawning expectations that the economy would get back onto a recovery path. In early 2001, however, exports, which had led the economic recovery, began to fall markedly, causing the economy to slip backward again. The government of Prime Minister Thaksin, inaugurated in February of that year, mobilized fiscal measures to stimulate domestic demand. However the Thai economy has yet to climb out of the doldrums.

In addition to the short-term macroeconomic policies, the IMF advised Thailand soon after the crisis to carry out medium- and long-term institutional improvements, such as the reform of the financial and corporate sectors. The Thai government followed this recommendation by pushing ahead with economic restructuring measures. Blaming the currency crisis on an unsophisticated financial system and inadequate corporate governance, the IMF and the World Bank pressed Thailand to carry out reforms of these areas (World

Bank [1999:93-101]). The Thai government, which had been planning to begin reform efforts even before the outbreak of the currency crisis, implemented drastic restructuring of its financial and corporate sectors after the crisis. The main items on the reform agenda included financial system reform focusing on sound management, corporate sector reform with emphasis on accountability and transparency of corporate management and equitable distribution of profits to shareholders, and the adoption of a system for promptly handling corporate bankruptcies that safeguards creditor rights.

Through these institutional reforms, the restructuring of Thai corporate groups is making rapid headway. Corporate groups were confronted with problems of excessive liabilities after the baht plunged during the currency crisis. In accordance with the ongoing institutional reforms, some groups are dealing with debt disposal and business restructuring by concentrating management resources on selected business areas, or by forming strategic alliances with foreign companies. With the progress of globalization, including market liberalization and advanced information technology, Thailand is beginning to feel the impact of corporate mergers and acquisition on a global scale. The entry of foreign companies has helped accelerate Thailand's industrial reorganization in such sectors as cement, banking, retail, and information and telecommunications. In addition, some corporate groups are becoming more positive about the disclosure of information to shareholders and investors, while others are grappling with organizational reforms by separating corporate ownership from management.

This paper begins by outlining institutional reforms and legal framework improvements concerning the financial and corporate sectors, and then describes their characteristics (Section 1 and Section 2). Then, it presents an analysis, using concrete examples, of the ways Thai corporate groups have proceeded with the restructuring of their debts and businesses, and how industrial reorganization is proceeding in response to the institutional reform and improved legal framework (Section 3 and Section 4). In the closing part of this paper, the author would like to attempt to make an assessment of the institutional reforms in Thailand and business restructuring by corporate groups. It would seem premature, however, to make that assessment as a majority of corporate groups are still in the midst of dealing with excess debts, and the continued sluggishness of the Thai economy is having significant effects on their reform efforts. Instead, therefore, the concluding section of this paper examines the benefits and limitations detected so far in the application of Anglo-American institutional reforms to Thailand by the IMF (Section 5).

## 2. INSTITUTIONAL REFORM AFTER THE CURRENCY CRISIS

### 2.1 Financial System Reform

The currency crisis in Thailand in 1997 was triggered by the fact that the country's financial system remained unsophisticated even while financial market liberalization was pushed through in the 1990s. After the Bangkok International Banking Facilities (BIBF), an offshore banking market, was established in 1993, financial institutions scrambled to raise low-cost funds overseas and competed with one another in lending to domestic borrowers. But there was little substantive screening of how the borrowed funds would be used, with the banks relying almost entirely on connections and collateral. The collapse of the bubble economy shattered the business operations of real estate firms and other borrowers, saddling banks with colossal amounts of non-performing loans and sowing the seeds of the currency crisis. After the crisis, the Thai government changed its conventional protective administration and strengthened inspection and supervision mechanisms by subjecting banks to the strict application of healthy management regulations.

In June and August 1997, Thailand's central bank, the Bank of Thailand, ordered 58 finance companies to suspend operations as they had failed to abide by the order to boost their capital bases and had fallen deeper into financial difficulties. After screening and examining their business improvement plans, the Financial Sector Restructuring Agency (FRA), established in October 1997, allowed only two to resume business. In December, it ordered the liquidation of the remaining 56. An international accounting house designated by the IMF and the World Bank was directly involved in the examination, sticking to the policy of shutting down failed financial institutions. The combined assets of the 56 failed companies worth 860 billion baht, were put to auction by FRA, with the Asset Management Corporation (AMC) participating as the buyer of last resort. Due to an inadequate legal framework for foreclosure, potential buyers tend to beat down prices of assets put up for sale in auction. In this case, non-core assets sold off were assessed for 35.1 billion baht, and core assets for 150 billion baht (just 27.4% of face value) (see Table 2-1).

In order to strengthen prudential regulation and the supervision of commercial banks and other financial institutions in operation, the Bank of Thailand classified loan claims into five categories, by the length of due periods of repayments, setting different provisioning requirements for respective categories. By setting five deadlines between the end of 1998 and the end of 2000, the central bank imposed requirements that these financial institutions increase loan loss reserves in stages in order to meet international capital adequacy standards.<sup>1</sup> Of the 15 local commercial banks, many of middle-

Table 2-1 Summary of the FRA's Auction of Assets

Type of Assets	day/year/ month	Winner Group			Foreign			AMC		
		Outstanding Principal Balance	Auction Value	Recovery Rate	Outstanding Principal Balance	Auction Value	Recovery Rate	Outstanding Principal Balance	Auction Value	Recovery Rate
		(Unit : Million Baht, %)								
Auto Hire Purchase Contracts	25 June 98	43,221.94	21,207.60	49.1						
Residential Mortgage Loans	13 Aug. 98	24,616.95	11,520.00	46.8						
Business Loans (1st Round)	15 Dec. 98	116,691.39	23,984.52	20.6						
Business Loans (2nd Round)	19 Mar. 99	11,685.18	2,134.00	18.3	185,363.45	31,110.08	16.8			
Construction Loans	6 July 99				999.02	142.89	14.3			
Commercial and other Loans	11 Aug. 99	104,848.20	23,063.35	22.0	2,505.95	837.13	33.4			
Commercial and other Loans (2nd Round)	10 Nov. 99				8,179.49	1,616.59	19.8			
Core assets		301,063.66	81,909.47	27.2	197,047.91	33,706.69	17.1			
Non-core assets										
Total										
Type of Assets	day/year/ month	Winner Group			Other Thai			Total		
		Outstanding Principal Balance	Auction Value	Recovery Rate	Outstanding Principal Balance	Auction Value	Recovery Rate	Outstanding Principal Balance	Auction Value	Recovery Rate
		(Unit : Million Baht, %)								
Auto Hire Purchase Contracts	25 June 98	8,590.21	3,651.19	42.5	51,812.15	24,858.79	48.0			
Residential Mortgage Loans	13 Aug. 98				24,616.95	11,520.00	46.8			
Business Loans (1st Round)	15 Dec. 98	38,984.86	12,849.17	33.0	155,676.25	36,833.69	23.7			
Business Loans (2nd Round)	19 Mar. 99	24,486.88	7,074.62	28.9	221,535.51	40,318.70	18.2			
Construction Loans	6 July 99	296.38	14.90	5.0	1,295.40	157.79	12.2			
Commercial and other Loans	11 Aug. 99	21,929.44	7,089.81	32.3	129,283.59	30,990.29	24.0			
Commercial and other Loans (2nd Round)	10 Nov. 99	8,140.58	3,745.33	46.0	16,320.07	5,361.92	32.9			
Core assets		102,428.35	34,425.02	33.6	600,539.92	150,041.18	25.0			
Non-core assets		76,258.49	35,101.51	46.0	76,258.49	35,101.51	46.0			
Total					676,798.41	185,142.69	27.4			

Source: Financial Sector Restructuring Authority (FRA)

ranking and low-end ones, who were burdened with massive non-performing loans, failed to pull off capital increase plans on their own. Of the seven banks that were temporarily nationalized, three were absorbed by state-owned banks, one was closed down, and three were sold off to foreign banks<sup>2</sup>. The temporary nationalization was carried out by writing off bad debts against shareholder capital, replacing management, and recapitalization through conversion of short-term credit from the Financial Institutions Development Fund (FIDF) of the central bank into equity. Foreign banks acquired a majority equity stakes in the Bank of Asia and Thai Danu Bank during their capital increases through new third-party share allotments. These two banks are now trying to strengthen their managerial and technical capabilities and skills in the financial sector, taking advantage of methods learned from foreign banks. The country's five largest banks also raised the stakes of foreign investors in order to boost their capital, though not up to a majority position (see Table 2-2).

On August 14, 1998, the Thai government announced a comprehensive package of financial sector restructuring measures, preparing a scheme to inject public funds into both Tier 1 and Tier 2 capital of financial institutions to help them boost their capital bases<sup>3</sup>. However, the amount of public funds

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<sup>1</sup> The definition of non-performing loans (NPLs) was changed from loans due over one year past to loans due over six months past, in January 1998, and then to loans due over three months past, in July 1998. Loans were classified into five categories by the due period: less than one month, one month to less than three months, three months to less than six months, six months to less than one year, and one year or longer (the latter three categories are considered non-performing), with the reserve ratio for loan losses set at 1%, 2%, 20%, 50%, and 100%, respectively. Under these criteria, commercial banks were required to increase loan loss reserves by 20% by end-December 1998, by 40% by end-June 1999, by 60% by end-December 1999, by 80% by end-June 2000, and by 100% by end-December 2000, meeting the capital adequacy ratio of 8.5% under the standards set by the Bank for International Settlements (BIS).

<sup>2</sup> Of the three commercial banks the government intended to sell to foreign banks, the sales of Bangkok Metropolitan Bank and Siam City Bank have not materialized yet due to differences over terms of the sale. State-owned Radhanasin Bank and temporarily nationalized Nakornthon Bank are to be sold to foreign banks that tendered winning bids in competitive auctions.

<sup>3</sup> As a measure to boost Tier 1 capital, the government first required a bank to submit business improvement plans. When the bank agreed to make a strict assessment of non-performing loans and advance the buildup of loan loss reserves, the government would infuse capital of up to 2.5% by providing negotiable government bonds in exchange for the bank's preferred shares, and for a portion in excess of that amount, would make an additional injection of capital matching an amount of capital provided by the private sector. For Tier 2 capital, when the bank reached a debt restructuring agreement with a debtor company and debt repayments actually continued for three months or longer, the government would permit an injection of public funds up to 20% of an amount of debt write-offs or new loans by providing nonnegotiable government bonds in exchange for the bank's subordinated bonds. The government would set up a government bond issuance quota of 300 billion baht for underwriting by banks, with interest subsidization coming from the government budget (Tarrin, Pichet and Phisit [2001:87]).

Table 2-2 NPLs and Recapitalization of Financial Institutions in Thailand

	NPLs of Total Loans (%)		Recapitalization (million baht)		Foreign Capital (%)	Major Shareholders
	Dec.98	Dec.99	Dec.00	Sep.01		
<b>PRIVATE BANKS</b>						
BANGKOK BANK	45.8	42.5	18.52	17.15	79,129	Sophonpanich Family under 10%
THAI FARMERS BANK	38.8	20.2	13.79	13.96	96,618	Lamsam Family under 6%
BANK OF AYUDHYA	35.3	31.0	22.68	20.79	49,500	Ratanarak Family under 10%
THE SIAM COMMERCIAL BANK	34.3	22.7	19.42	21.95	82,290	Bureau of the Crown Property 11.25%
THE MILITARY BANK	29.7	29.1	23.22	22.09	52,143	Royal Army
DBS THAI DANU BANK	44.5	39.6	7.75	6.17	33,043	DBS 51.72%
STANDARD CHARTERED NAKORNTHON BANK	39.8	57.7	1.32	1.98	7,673	SCB 75.01%
BANK OF ASIA	37.1	43.4	22.61	25.20	27,233	ABN Amro 76.77%
UOB RADHANASIN BANK	65.7	1.1	0.59	0.59	19,793	UOB 75.02%
<b>TOTAL PRIVATE BANKS</b>			18.02	17.78	447,422	
<b>STATE-OWNED BANKS</b>						
KRUNG THAI BANK	54.3	57.1	8.39	9.33	205,000	FIDF
SIAM CITY BANK	58.5	64.6	58.59	0.35	51,400	FIDF
BANGKOK METROPOLITAN BANK	68.1	62.3	57.16	11.97	64,190	FIDF
BANKTAHI	74.1	74.5	2.85	4.67	86,982	FIDF
<b>TOTAL STATEOWNED BANKS</b>			21.63	7.49	449,572	
<b>TOTAL</b>	45.2	42.9	19.28	14.28	896,994	

Source: Bank of Thailand and others

infused under the scheme totaled only 61,304 million baht in Tier 1 at four financial institutions, and 8,523 million baht in Tier 2 at nine financial institutions. Among commercial banks in particular, only Siam Commercial Bank and Thai Military Bank received public funds for their Tier 1 capital. These poor results can be traced to the hesitation of bank managers to seek public funds, as they feared they might be pressed to accept consequences stringent conditions for the business improvement plans (memoranda of understanding) they were required to submit for approval by the minister of finance. Thus, many banks opted to boost capital without the aid of public funds, relying instead on the issuance of capital augmented preferred shares (Caps) or stapled limited interest preferred shares (Slips)(see Table 2-3).

The ratio of non-performing loans (NPLs) to total outstanding loans of Thai financial institutions peaked at 47.7% in May 1999, but gradually declined thereafter, falling to 12.9% in September 2001, with the total bad loans standing at 615.8 billion baht (see Table 2-4). The caused of the fall in this ratio is examined here (see Table 2-5). The single largest factor behind the decline was the progress made in debt restructuring negotiations (to be explained below). Banks promoted these negotiations because they can classify bad loans as normal performing loans once debt restructuring accords are reached on the non-performing loans involved. Another factor that made a certain contribution to the decline was the transfer of non-performing loans to

**Table 2-3 Sources of Recapitalization of Financial Institutions in Thailand**

Unit: billion baht

	Shareholders		Bond	Government	Total
	Old	New			
<b>PRIVATE BANKS</b>					
BANGKOK BANK		43.2	34.5		77.7
THAI FARMERS BANK	23.5	33.1	20.0		76.6
BANK OF AYUDHYA	11.5	17.0	13.0		41.5
THE SIAM COMMERCIAL BANK	6.0	32.9		32.5	71.3
THE THAI MILITARY BANK	3.3	11.6	10.0	19.9	44.9
DBS THAI DANU BANK	10.9	7.9	12.5		31.3
STANDARD CHARTERED NAKORNTHON BANK	0.7			7.0	7.7
BANK OF ASIA	18.1	7.5			25.6
UOB RADHANASIN BANK				19.8	19.8
<b>STATE-OWNED BANKS</b>					
KRUNG THAI BANK	20.0			77.0	97.0
SIAM CITY BANK				51.4	51.4
BANGKOK METROPOLITAN BANK		0.1		35.7	35.8
BANKTHAI				49.4	49.4
THE INDUSTRIAL FINANCE CORPORATION OF THAILAND	2.7	6.6			9.3
<b>TOTAL</b>	<b>96.7</b>	<b>160.0</b>	<b>90.0</b>	<b>292.7</b>	<b>639.3</b>

Source: Tarrin, Pichet and Phisit [2001: 88].



Table 2-5 Reasons of Increase and Decrease in NPLs

	Unit : Million Baht, %								
	Dec-99	Mar-00	Jun-00	Sep-00	Dec-00	Mar-01	Jun-01	Sep-01	
Increase - Decrease (net)	-436,350	-97,519	-379,397	-498,190	-261,365	-10,182	-240,183	8,729	
Increase in NPLs	170,093	138,183	113,853	116,656	122,079	93,540	109,733	111,138	
New NPLs	137,432	100,353	66,527	59,470	54,714	39,728	45,476	44,658	
Re-Entry NPLs	32,661	37,830	47,326	57,186	67,365	53,812	64,257	66,480	
Decrease in NPLs	606,443	235,702	493,250	614,846	384,057	103,722	349,916	102,409	
Debt Restructuring	258,639	149,618	208,364	120,428	129,252	66,297	73,631	58,883	
Other reasons consist of	347,804	86,084	284,886	494,418	254,805	37,425	276,285	43,526	
Transfer to performing loans category	70,375	34,431	34,949	22,002	22,547	15,695	16,056	15,014	
Transfer to AMC	139,598	—	1,159	438,525	3,852	—	211,284	—	
Bad Debt Write-off	69,534	6,217	207,122	5,284	79,628	14,363	21,151	12,446	
Others, for example, principal repayments, write-off from losing right of claim and selling of debt, etc.	68,297	45,436	41,656	28,607	148,778	7,367	27,794	16,066	

Source: Bank of Thailand

asset management companies (AMCs). The government encouraged the establishment of private-sector AMCs as a way for banks to dispose of bad loans on their own, and Thai banks, beginning with Thai Farmers Bank, began to set up AMCs to act as receptacles for non-performing loans. As another drastic solution to the bad debt problem, DBS Thai Danu Bank resorted to a package sale of its non-performing loans. As it was able to boost its capital with the support of foreign capital, it could completely write off the bad loans through a sell-off to investment banks and other buyers at 29% of book value.

While there has been clear progress in the disposal of bad loans, a plethora of problems remain to be sorted out regarding the ratio of non-performing loans to total loans outstanding. Most of the debt restructuring agreements resulted in the rescheduling of repayments, as banks sought to avoid the burden of immediate write-offs of losses that would have been required if they had waived claims<sup>4</sup>. However, rescheduling entails the risk that loan claims will become non-performing again if borrowers fail to return to profitability. In fact, in 2001 there were an increasing number of instances where corporate borrowings were reclassified as non-performing again after the expiration of the grace period. The transfer of non-performing loans to AMCs removed them from the banks' balance sheets. However, as long as AMCs remained wholly owned subsidiaries of banks, such transfers do not really solve anything on a consolidated basis, but only give the appearance of the disposal of problem loans. It can be said, at least, that banks used the bad loan disposal process as an opportunity to separate their lending and debt restructuring divisions and to have them concentrate on their respective lines of business.

The financial system reform initiative of the previous administration under Prime Minister Chuan adopted a market-based approach, focusing on the prevention of moral hazards. However, its policy of leaving the disposal of non-performing loans to the banks' own efforts proved to have limitations. But the Chuan government hesitated at committing the government to deeper involvement in the face of the huge costs that had already been incurred in dealing with the huge volume of non-performing loans at Thai financial institutions, and in reconstructing the financial sector, including the provision of liquidity support to finance companies and the infusion of massive public funds through FIDF to assist the capital increases of nationalized banks and the establishment of AMCs for state-owned banks.

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<sup>4</sup> Debt rescheduling accounted for 47% of all the debt restructuring agreements reached, with debt-equity swaps standing at only 16%. Debt rescheduling and reduction of and exemption from interest payments are not real solutions because debtor companies become insolvent again once economic growth slows down or interest rates shoot up in the future. Considering the debt repayment capabilities of debtors, reductions in debt principal or debt-equity swaps are more desirable, but they still represent only a low proportion of the total debt restructured (Bank of Thailand [1999:19], Higashi [2001a:181]).

## 2.2 Corporate Debt Restructuring Advisory Committee

Many Thai corporate groups were confronted with massive debt problems in the wake of the devaluation of the baht and the deepening domestic recession that followed the Asian currency crisis. In its initial stage, the process of debt restructuring was utterly disordered because of conflicts of interests between domestic and foreign creditors, or between secured and unsecured creditors. The Joint Public-Private Sector Consultative Committee (JPPCC) stepped in, calling for the establishment of a supervisory organization that would set guidelines for making the rules and clarifying the procedures under which creditors, starting from a standstill, could cooperate in debt restructuring. In June 1998, The Corporate Debt Restructuring Advisory Committee (CDRAC) was created, with the Bank of Thailand acting as a neutral supervisory organization. The aim of this move was to launch the work of establishing an institutional framework for out-of-court voluntary negotiations between debtors and creditors for the prompt solutions of problems<sup>5</sup>.

As a first step, CDRAC decided to have all creditor banks participate in the debt restructuring framework. Then, for debt restructuring involving big businesses and multiple creditors it adopted the principle of voluntary negotiations by the parties concerned under a market-oriented approach (the Bangkok Approach). Five private-sector associations (two debtor associations and three creditor bodies) signed an agreement on this approach in August 1998 (Bank of Thailand [2000a]). It is an improved version of the London Rule framework. CDRAC limited its role to being a coordinator of information gathering and provision, urging negotiations between the parties directly involved, and supporting them with preferential tax measures.

As the voluntary negotiations appeared to be going nowhere, CDRAC began to act as an intermediary in the debt talks, instructing the parties on how to proceed and setting deadlines for achieving progress. The five private-sector associations accepted the guidelines for negotiations under CDRAC's new

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<sup>5</sup> CDRAC is an independent organization, comprised of three government representatives (with the Governor of the Bank of Thailand as Chairman) and five private-sector representatives (the Presidents of the Board of Trade of Thailand, the Federation of Thai Industries, the Thai Bankers' Association, the Association of Finance Companies, and the Foreign Bankers' Association). Its mission is to set policies for facilitating debt restructuring, and encourage negotiations as a neutral organization when negotiations between the parties directly involved hit a snag. CDRAC's Sub-Committee consists of the three government representatives, five deputies to the private-sector representatives and one person with an academic background, and meets every week to work out proposals for the facilitation of debt disposal, grasp problem areas, and consider solutions. The office, located at the central bank, is charged with monitoring of the progress of debt restructuring and coordination with government agencies in issuing or amending laws and measures to provide tax exemptions and reduce land-transfer fees for creditors and debtors who successfully restructure their debts. (Higashi [2001b: 172-174]).

framework, signing the Debtor-Creditor Agreement on Debt Restructuring Process (DCA) and the Inter-Creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures (ICA) in March 1999 (Bank of Thailand [2000b]). The new binding agreements called for the setting of deadlines, the appointment of an arbitrator if no agreement could be reached by the parties concerned before the deadline, and the course of court proceeding if agreement remained elusive even with the aid of the arbitrator.

Since CDRAC began to get involved in the mediation of the negotiations in mid-1999, debt amounts covered by the settled talks increased sharply. Initially, companies subject to CDRAC-targeted debt restructuring were selected from lists submitted by creditor and debtor associations. With large debtors as well as small- and medium sized debtors added to the lists<sup>6</sup> and more debtors coming to understand the advantages of talks held under the CDRAC guidelines, such as tax exemptions, the number of companies joining the framework increased. Of the total of 11,446 cases subject to CDRAC-targeted debt restructuring as of the end of 2000, with combined debts of 2.6 trillion baht, debtors that had settled the talks or were waiting to sign contracts approved by creditors numbered 6,239, for 1.16 trillion baht, or 44.5% of the total debts (see Table 2-6).<sup>7</sup> It can be said that a certain degree of progress, centering on large debtors, was achieved in the CDRAC-led debt restructuring.

The advantages of the voluntary debt workout scheme negotiated by the parties directly involved include lower costs than legal actions, that requires the hiring of lawyers and long hours of court proceedings, as well as the preparation of private rehabilitation programs while avoiding liquidation. The orderly debt workout scheme can be seen as an efficient method, since the CDRAC guidelines provide for voluntary negotiations beginning from a standstill, and the approval of rehabilitation programs by creditors' meetings is the same framework as a court proceeding. However, the orderly debt workout scheme leaves room for conflicts of interests between secured creditors and unsecured creditors, because it lacks the legal grounds to preserve assets while the talks are under way. Another drawback is that debt repayment plans worked out in the talks are not legally binding. This leaves the door open for litigation by creditors who do not want to enter into the voluntary negotiations (Nipon [2000: 5-7, 30-41]).

<sup>6</sup> Agreements on restructuring for small- and medium sized debtors, based on lists of debtors submitted by each bank, are sought in 60 to 90 days through Simplified Agreement (SA). The debt restructuring process at large sized debtors usually requires five to seven months.

<sup>7</sup> Debt restructuring negotiations passed a critical point, with debts in the process of restructuring representing just 2.3% of the total debts. On the other hand, 11.6% of the total debts are being shifted to court proceeding as debtors refuse to sign CDRAC-mediated agreements or fail to reach accords in debt restructuring talks. For similar reasons, 34.3% of the total debts have already shifted to court proceedings.



### 2.3 Thai Asset Management Corporation

In a shift of policy from the Chuan administration, the Thaksin government, which was inaugurated in February 2001, established the Thai Asset Management Corporation (TAMC), with its capital wholly put up by FIDF. The purpose of TAMC was to purchase non-performing loans from banks, in order to provide a drastic solution to the bad loan problem. The new government, which saw the unresolved bad loan issue as the main factor blocking the growth of bank lending despite low interest rates, apparently thought that progress in the disposal of bad loans with direct government involvement would help restore the financial intermediary function of banks. The Chuan government adopted a market-based approach for financial system reform relying on the banks' self-help efforts in the disposal of bad loans. However, this only resulted in the shift of non-performing loans from banks to the AMCs they created. Meanwhile, CDRAC, which was charged with the disposal of debts involving two or more creditors, limited its role to coordination and mediation. The CDRAC guidelines were not binding upon creditors that were not banks.

In February 2001, immediately after taking office, Prime Minister Thaksin gathered government officials and representatives of private-sector financial institutions to Cha-am, a resort area, for a seminar on the disposal of non-performing loans. He clinched the participants' agreement on the establishment of a public organization and announced the creation of a working group, chaired by Dr. Thanong Bidhya, to study the details of the organization's establishment.<sup>8</sup> After numerous sessions, the working group decided on the establishment of TAMC, which would purchase bad loans worth 1.35 trillion baht from banks and set a framework for specific disposal measures, including purchase prices and loss-sharing arrangements. In April, the supervisory committee for the disposal of non-performing loans, also headed by Dr. Thanong, was created to supervise the bad loan situation pending the official launch of TAMC. A bill for the establishment of TAMC was drafted by the working group's subgroup for consideration by the supervisory committee.

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<sup>8</sup> The Working Group for the Establishment of National Asset Management Corporation (chaired by Dr. Thanong Bidhya) was inaugurated in March, with representatives from both the government and private sector joining to discuss the course of the establishment, form, composition and administration. In order to work out details, the following four subcommittees were established: (1) general administration (headed by Mr. Chaktip, assistance governor of the Bank of Thailand); (2) asset management (headed by Mr. Chulakorn, president of the Thai Bankers' Association); (3) price assessment (headed by M. R. Chatu Monngol Sonakul, governor of the Bank of Thailand); and (4) legal affairs (headed by Dr. Sathit, director-general of the Fiscal Policy Office of the Ministry of Finance). The Working Group named the national asset management corporation TAMC, and decided to establish it as a public organization, not as a state enterprise, in order to deal with the disposal of non-performing loans promptly.

The minister of finance then sent the draft to the legal reform committee.<sup>9</sup> After some modifications, it was adopted by the cabinet and promulgated in June as the Emergency Decree on the TAMC.

The Thaksin government decided to establish TAMC to push ahead with the disposal of bad loans on the following grounds. In its view, there were two types of non-performing loans that had yet to be disposed of: syndicated loans with multiple creditors involved who found it difficult to adjust their interests, and bad loans held by government-controlled banks. In the former case, it would be easier to negotiate restructuring agreements if TAMC purchased them and then acted as a single creditor. The disposal of latter loans was pushed back by bank managers mainly because of stringent regulations regarding state-operated banks. However, they could be settled if TAMC were adequately authorized to deal with the problem. In establishing TAMC, the government studied the advantages and disadvantages using the examples of Malaysia, South Korea and Sweden. In order to ensure its efficient operation, it created a Supervisory Committee, Executive Committee, and Audit Committee.<sup>10</sup> The main purposes for the establishment of TAMC were: (1) the prompt disposal of non-performing loans; (2) support for debtor firms in resuming their normal business operations by easing banks' reluctance to lend; and (3) minimizing the burdens of the state and taxpayers.

Initially, private-sector banks welcomed the TAMC initiative, after Prime Minister Thaksin explained that the transfer of sub-quality assets to TAMC at net book value would allow banks, which were currently being pressed to build up additional loan loss reserves and increase capital, to minimize the need for fresh reserve buildups and avert an immediate business crisis. TAMC's aim was to dispose non-performing loans in a period of up to 10 years, with the anticipated losses to be shared under a gain/loss sharing formula. Banks were to shoulder the losses up to 20 percent of the transfer price of loan claims, banks and TAMC were to equally share the next 20 percent losses, and TAMC was to accept the remainder. The ultimate losses to TAMC were to be taken over by FIDF, and eventually covered by the Ministry of Finance.

However, the draft bill did not fully meet the banks' expectations. The emergency decree called for the purchase price of sub-quality assets to be the value of collateral assessed by the Department of Lands. However, the department did not make assessment's of all the lands involved, and the assessed prices were often lower than going market prices. At the request of banks, it was amended to allow assessment according to market prices under the prin-

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<sup>9</sup> The Legal Reform Committee, one of the committees the Thaksin government organized as advisory committees under the direct control of the Prime Minister, is chaired by Mr. Mechai Richupan, with the Council of State serving as its secretariat.

<sup>10</sup> The Supervisory Committee is made up of 12 representatives of the government and private-sector creditors and debtors, while the Executive Committee consists of five representatives of creditors and debtors. The Audit Committee has three members.

ciples set by the Bank of Thailand. The assessment of collateral value was conducted after selecting companies from among the registered with the Securities and Exchange Commission (SEC). After the finalization of the assessment TAMC issued FIDF-guaranteed notes to banks.<sup>11</sup> The only sub-quality assets transferred to TAMC from private-sector banks were those loans with multiple creditors; single-creditor loans were not accepted. Banks had to choose either to hand over all qualified assets, or simply not to participate in the scheme.<sup>12</sup> On the other hand, state-owned banks were able to transfer all of their sub-quality assets to TAMC. Most of the sub-quality assets disposed of by TAMC were those of state-owned banks (1.1 trillion out of 1.35 trillion baht disposed of).

The transfer of sub-quality assets from banks to TAMC began in October 2001. The transferred assets are to be disposed of by any of the following four methods: (1) debt repayments; (2) debt restructuring; (3) business reorganizations; and (4) sale of collateral assets. Debt repayments are accepted when debtors want to make repayments in order to remove obstacles that stand in the way of their ability to acquire fresh lending. Debt restructuring is mandatory, under predetermined principles, and involves loan reductions, reduction and/or exemptions of interest payments, debt-equity swaps, and the rescheduling of payments. Business reorganization calls for the mandatory and rapid implementation of business rehabilitation programs by appointed plan administrators. The sale of collateral assets is considered to be a last resort. When debtors cannot be trusted, financial advisers are appointed to control their financial affairs. The disposal of sub-quality assets by TAMC is characterized by the legal force of the Supervisory Committee in deciding methods of disposal and the limited role of the Central Bankruptcy Court, which only endorses its decisions.<sup>13</sup>

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<sup>11</sup> There are several problems that need to be addressed. For example, banks are demanding priority collateral repayment rights while they, without collateral, continue to provide debtors with working capital after non-performing loans are transferred from private-sector banks to TAMC. The transfer of non-performing loans at state-owned banks simply means the shift of loans to organizations set up by FIDF.

<sup>12</sup> The cut-off date for non-performing loans subject to debt restructuring is the end of 2000. Loans whose disposal was settled by July 9, 2001, or that became non-performing later than that date are not eligible for the transfer. This is to prevent debtors from placing undue expectations on the reductions of debts by TAMC. Transferable non-performing loans are those on which no court rulings have been handed down.

<sup>13</sup> A TAMC subcommittee, made up of two creditor bank representatives, two TAMC officials and one person of academic standing, is responsible for the disposal of sub-quality assets. Banks, the largest among creditors, have no choice but to be actively involved in the disposal of sub-quality assets in order to minimize potential losses five or 10 years down the road and to prevent corruption. The subcommittee drafts a debt restructuring plan in accordance with the guidelines and presents it to a meeting of creditors for their endorsement.

### 3. ECONOMIC LEGISLATION AFTER THE CURRENCY CRISIS

#### 3.1 Corporate Governance

Thailand's poor system of corporate governance was cited as one of the causes of the currency crisis, along with the unsophisticated state of the financial system. At many Thai corporate groups, where ownership and management were not clearly separated, the boards of directors were dominated by owning family members and their close associates. This situation ruled out effective monitoring from the outside or up-to-par financial auditing, making corporate management extremely inefficient (World Bank [1998:67-68]). Thai companies depended heavily on banks to raising funds, increased their leverage as far as they could, and diverted funds to group subsidiaries. All of these resulted in management inefficiency and eventually led to the crisis.<sup>14</sup> Against this background, it was considered essential to introduce good corporate governance with an emphasis on accountability and transparency in order to improve the efficiency of corporate management in Thailand.

The type of corporate governance that the IMF and the World Bank pressed Thailand to introduce reflects the Anglo-American idea of maximizing value to shareholders. The following areas were cited as inadequacies in the Public Limited Company Act B.E. 2535 (1992) in protecting shareholder rights: (1) it fails to recognize the right of shareholders to proxy by mail; (2) it does not enforce a method of resolution based on the one-share one-vote rules; and (3) it requires a high threshold of at least 20 percent of total eligible votes to call an emergency shareholders' meeting<sup>15</sup> (La Porta and others [1998], Deunden [2001: 192-193]). All these concern the protection of minority shareholders. A plan is under study to revise the law and lower the minimum number of shares needed to seek a shareholders' meeting to 5 percent. Work to revise the Public Limited Company Law is focusing, along with the protection of minority shareholders, on strengthening the accountability of board members, apparently with the improvement of corporate governance in mind.

Since 1997, the Stock Exchange of Thailand (SET) and the SEC have been examining the introduction of corporate governance for listed companies. However, the full adoption of corporate governance came only in January 1998 under the guidelines issued by the SET upon the recommendation

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<sup>14</sup> While the average debt/equity ratio for listed non-financial firms crept up from 1.6 in 1988 to 2.4 in 1996, the real rate of return on assets (in local currency) for the median company drifted down from 10.8 percent in 1988 to 7.4 percent in 1996. The end result of this was a decline in the interest cover, and a greatly increased vulnerability of Thai companies (Claessens, Djankov and Lang [1998: 4, 8-9, 13-14], Ammar [2001: 17].

<sup>15</sup> Or when the shares held amount to 10 percent of total eligible votes, the number of shareholders represented needs to be at least 25.

made by the IMF after the currency crisis.<sup>16</sup> The guidelines required all listed companies to appoint at least two outside directors, and at least three auditors independent of corporate owners or managers, and to submit standards-compatible annual reports of activities, all by the end of 1999. Companies that failed to meet the requirements faced penalties.

Most board members at Thai companies are connected to major shareholders in one way or another, and were not in a position to supervise management by executives appointed by influential shareholders or to raise their voices against management policies. In fact, some public limited companies were found to have siphoned funds raised on the securities market into affiliates owned by major shareholders. There were also instances of insider trading on the stock market. Minority shareholders, on the other hand, had no choice but to believe in the effectiveness of management supervision by the board of directors and in the role of the audit board. Under these circumstances, the above-described requirements were adopted as ways to promptly improve the monitoring of corporate management and accountability to shareholders.

The effective supervision of corporate management requires a system that can ensure high standards of accounting and auditing. Thai companies, which are mostly family-owned, are generally reluctant to disclose their financial conditions, and many are believed to have regularly followed the practice of dual or triple bookkeeping to avoid taxes. With regard to certified public accountants, an acute shortage during the boom period in the early 1990s resulted in a great number of firms that had been covered by each CPA, giving rise to concerns about the deterioration of corporate auditing. As a step to ensure the transparency of corporate management, the World Bank in May 1998 gave instructions to the Fiscal Policy Office of the Thai Ministry of Finance regarding reforms of the accounting and audit systems. Following these instructions, the Institute of Certified Accountants and Auditors of Thailand, in cooperation with the Ministry of Commerce's Bureau of Supervision of Auditing Practices, made drastic changes in its accounting standards and the accountant certification system (Suehiro and Natenapha [2000]). The accounting law, as revised in August 2000, requires all public companies to prepare financial and accounting reports on the basis of international accounting standards or U.S. financial and accounting standards, as well as to have auditing done by certified accountants.

The adoption of corporate governance in Thailand after the currency crisis was aimed to create a shift from the merit-based approval of exchange listings to a disclosure-based system, requiring accountability and transparency in corporate management (Tarrin, Pichet and Phisit [2001:101]). Corporate information disclosure in accordance with internationally-accepted standards is also essential to correct the over-dependence on indirect financing in

<sup>16</sup> "Code of Best Practice for Directors of Listed Companies" and "Best Practice Guidelines for the Audit Committee"

corporate fund raising, fostering a viable capital market. Along with the progress in institutional reform, it will also be necessary for corporate directors and shareholders themselves to completely change their attitudes. The newly formed Thai Institute of Directors Association is charged with the role of providing education on the importance of corporate governance, and encouraging management reform to respond to globalization.

### **3.2 Reform of the Bankruptcy Law**

Along with the protection of shareholder rights, another pillar of corporate reform in Thailand advocated by the IMF and the World Bank was the establishment of a system for prompt bankruptcy procedures that could safeguard creditor rights. The Second Letter of Intent concluded between Thailand and the IMF in November 1997 specifically referred to revisions to the bankruptcy and foreclosure laws. In disposing of banks' non-performing loans, rules have to be clarified for the bankruptcy or rehabilitation of companies that became unable to repay debts as scheduled, in order to ensure an efficient flow into the market of the funds necessary for economic reconstruction. In line with the IMF recommendation, a revised bankruptcy law was enacted by the Parliament in March 1998 (for enforcement in April of that year), newly introducing rehabilitation procedures for troubled companies.

When an application is filed in court for rehabilitation procedure, this action triggers an automatic halt on debt repayments, asset transfers and litigation; the debtor is placed under the official receiver. Generally speaking, the selection of planners for rehabilitation programs is made either by the method of replacing management temporarily or by retaining debtor management. Britain, Singapore and many other countries use the former, with creditors given the chance to take a leading part in the plan during the period of moratorium under replaced management. The bankruptcy law of Thailand authorizes the planner to control management for a period of five years. A good example of the latter method is Chapter 11 of the U.S. bankruptcy code, which allows the incumbent management to map out rehabilitation plans (Sutee [1999: 211-213]). The Thai bankruptcy law is based on the British model. However, a problem arose regarding court appointments of planners for bankrupt companies, namely a shortage of people well versed in corporate management. This opened the way for the incumbent management of debtor companies to stay in effective control of management and to carry out rehabilitation programs that took into consideration their knowledge about the business operations of the insolvent firms.<sup>17</sup>

In light of the lack of progress in corporate rehabilitation even after the revision of the bankruptcy law, work was launched to revise the law again to remove obstacles to procedures for quick legal disposal. This was carried out in parallel with institutional improvements to CDRAC-supervised proceed-

ings on debt workout schemes. The IMF recommendation on the second revision was conveyed to the Ministry of Justice through the Finance Ministry's Fiscal Policy Office. The Justice Ministry set up a committee to consider legal matters for economic problems, inviting experts to examine and correct the shortcomings of the bankruptcy law. Since it had been working on the drafting of bankruptcy law revisions since 1987, it prepared a revision bill incorporating the IMF recommendation, and the bill was adopted by the cabinet after adjustment at the Council of State and then sent to the Parliament. Though held up for a long period of time due to opposition resistance in the Senate, the revision bill was enacted in March 1999 without any major change to its framework.<sup>18</sup>

In order to speed up bankruptcy proceedings, the first law to be enforced was the law establishing a Central Bankruptcy Court specializing in bankruptcy and rehabilitation cases. The important provisions of the twice-revised bankruptcy law, enforced in April 1999, include: (1) the facilitation of bailout financing; and (2) the classification of creditors and relaxation of conditions for approving reorganization plan. With regard to (1) creditors could make filings for loans extended even when they knew about the debtor's insolvency, as long as the loans were provided for the purpose of enabling the debtor's business to continue (Section 94 (2)). Regarding (2), under the previous version of the bankruptcy law, approval of the reorganization plan required a special resolution at a meeting of all the creditors, approved by a majority in number of creditors with of least 75 percent by value of claims. The newly

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<sup>17</sup> However, if they can garnish a two-thirds majority, creditors can appoint the planner for the rehabilitation. In the case of rehabilitation procedures for Thai Petrochemical Industry PLC (TPI), the consortium of creditor banks led the selection of the planner after TPI's founder (debtor), in fear of losing control over the company's management, tried to put off negotiations in a bid to obtain favorable terms and conditions. The description of the process of the bankruptcy law revision is based on an interview with Wisit Wisitsora-At, executive director of the Business Reorganization Office of the Legal Execution Department of the Ministry of Justice.

<sup>18</sup> The opposition came mainly from members of the Senate's special committee responsible for deliberations on bills related to economic reforms. As reasons for their opposition, they argued that legal revisions were being imposed by the IMF and that increased bankruptcies would adversely affect Thai society. Some even charged that the legal revisions would only serve to facilitate investment by foreign companies and would be tantamount to selling the country to foreign capital. At the time, the Senate consisted of appointed members, many of whom were businessmen and thus spoke for company executives who were struggling with debt repayment problems. The government for its part argued that revisions to many of the economy-related laws had been under consideration for years before the IMF made its demands and that speedy procedures through revisions to the bankruptcy law were essential for Thailand to solve its non-performing loan problems and achieve economic recovery. The government insisted the legal revisions would not lead to a sharp rise in bankruptcies or to the favorable treatment of foreign firms (Higashi [2001b:175-177]).

amended law classifies creditors into major secured creditors (holding not less than 15 percent of the total debts), minor secured creditors, unsecured creditors, and subordinated creditors (Section 90/42 (2)). A reorganization plan is deemed to be approved if a meeting of at least one group of creditors approves a special resolution and the amount of debt of the creditors who have accepted the plan at the meeting of every group of creditors is not less than fifty percent of the total debt of creditors who have personally, or by proxy, attended the meeting of creditors and cast their vote on such a resolution. (Section 90/46). The new provisions thus call for minority creditors to accept of a decision favored by a majority of creditors.

With the new bankruptcy law enforced and the Central Bankruptcy Court established in June 1999, the processing of bankruptcy cases quickened. By the end of 2000, 159 petitions for rehabilitation procedures had been filed involving combined debts of 825.8 billion baht (see Table 2-7). Of them, 137 cases were accepted for rehabilitation procedures. While many are still in the stage of mapping out rehabilitation plans, 55 plans have already been approved.<sup>19</sup> When debtors do not cooperate in CDRAC-administered debt workout procedures, the arrangements call for creditor banks to seek court proceedings. Such cases increased sharply from 2000. The advantages of the court option are that the rights of creditors are protected in accordance with their respective claims, individual creditors are blocked from filing lawsuits after court orders for the preservation of assets, and uncooperative creditors cannot conduct out-of-court negotiations with debtors. On the other hand, the disadvantages include a greater possibility of small creditors being forced to give up on some of their claims, as agreements reached among a majority of creditors can be imposed on minority groups.

Thailand's debt restructuring scheme can be summarized as having the following characteristics. Limiting debt restructuring to court proceeding would have overwhelmed the Thai courts, given the large number of cases and colossal amounts of liabilities involved. Business associations, under pressure for an early solution to the problem, came to recognize the merits of orderly debt workout measures and established the CDRAC framework in cooperation with the government. This scheme, backed with the same framework as court proceedings, is designed to efficiently work out rehabilitation plans. When this course of action fails to produce agreements, the cases are automatically made subject to court proceeding. Even when an agreement is clinched on an orderly debt workout scheme, the case can still be shifted to the courts to give binding force to the rehabilitation plan. Thus, the steady progress of debt restructuring in Thailand owes much to the mutually complementary roles of the orderly debt workout scheme and court proceedings.

<sup>19</sup> The description of the procedures for business reorganizations at Central Bankruptcy Court is based on interviews at the Business Reorganization Office of the Ministry of Justice.

**Table 2-7-1/2 Business Reorganization of Central Bankruptcy Court in Thailand**

	Unit: Cases, Million Baht									
	10 Apr. 98~ 10 Oct. 98	11 Oct. 98~ 21 Apr. 99	22 Apr. 99~ 31 Oct. 99	1 Nov. 99~ 30 Apr. 00	1 May 00~ 31 Oct. 00	1 Nov. 00~ 30 Apr. 01	1 May 01~ 7 Dec. 01	Total		
Court Acceptance of the Petition	9	9	12	36	83	44	53	246		
Petitioner withdraw its Petition				5	8	11	6			
Court Order for Business Reorganization	3	7	12	31	75	33	36	197		
Court Order Accepting the Reorganization Plan	3	4	11	29	58	13	0	118		
Court Order not accepted the Reorganization Plan	0	3	1	1	10	0	0	15		
In the Process of Submission of the Plan	0	0	0	1	7	20	36	64		
Total Amount of Assets	51,596	39,638	187,158	1,066,481	341,730	139,173	154,764	1,980,540		
Total Amount of Debts	44,312	11,573	180,192	1,159,084	836,243	9,947,896	0	12,179,300		

Source: Business Reorganization Office, Legal Execution Department, Ministry of Justice.

**Table 2-7-2/2 Judicial Cases of Central Bankruptcy Court in Thailand**

	Liquidation				Business Reorganization			
	Petition	Debits	Order		Petition	Debits	Order	
Jun. ~ Dec. 1999	416	10,148.7	210	25	153,796.9	21		
Jan. ~ Jun. 2000	464	28,550.7	443	65	418,164.6	50		
Jul. ~ Dec. 2000	522	48,504.7	485	69	253,847.5	66		
Jan. ~ Jun. 2001	510	198,711.7	456	34	153,715.2	44		
Jul. ~ Nov. 2001	909	298,620.9	525	45	173,176.9	44		
Total	2,821	584,536.7	2,119	238	1,152,701.1	225		

Source: Central Bankruptcy Court

### 3.3 Facilitation of Investment by Foreign Companies

In addition to the disposal of the non-performing loans of banks and corporate debt restructuring, the Thai government placed emphasis on improving the environment for investment, centering on easier access by foreign companies, as another pillar of the legal system reforms aimed at an economic recovery. Many Thai companies, under the burden of excess debts due to the devaluation of the bath and the recession after the currency crisis, were finding it difficult to even procure adequate working capital. Therefore, a need was felt to rely on foreign companies to boost their financial strength by increasing the capital of domestic firms. In the medium- and long-term perspective, it was also felt to be necessary to enhance the competitiveness of goods and services by technical transfers through joint ventures with foreign firms in business fields where Thai companies had inadequate technologies and know-how.

In dealing with the financial difficulties of domestic banks that had touched off the currency crisis, the first step the government took was to impose international capital adequacy standards on the commercial banks, to ensure the soundness of their management. In doing so, apparently in consideration for with banks that would not be able to increase capital on their own apparently, the government lifted restrictions that had limited foreign capital participation in domestic banks to up to 25% for a period of 10 years. The purpose was to allow domestic banks to increase their capital by the infusion of funds from foreign-affiliated financial institutions. Consequently, of the nine private-sector commercial banks still operating in Thailand, four are under majority-ownership by foreign banks, and run in the management style of their foreign parents. Thailand's top five banks also increased their capital by raising the equity ownership of foreign investors, though foreign holdings have yet to top the 50% mark. The foreign-owned Thai banks are now struggling with management reforms. They are introducing new know-how into their retail banking operations and also making massive investments into improving their information and technology infrastructure. Their efforts are beginning to influence the way the tops banks do business, intensifying competition in the Thai domestic banking market.

In December 1997, the Board of Investment (BOI) announced a decree allowing majority ownership by foreign capital, with the consent of Thai business partners, in investment promoted companies operating in Zone 1 and Zone 2 located around Bangkok.<sup>20</sup> The decree was necessitated by the need to ask foreign partners to raise their equity stakes in joint ventures in order to cover shortages of working capital and equity capital as Thai companies faced

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<sup>20</sup> Announcement of the Office of the Board of Investment No. POR. 10/2540 (announced on December 3, 1997). The application was retroactive to October 27, 1997.

the acute shortage of liquidity in the wake of the currency crisis. In the one-year period from November 1997, 180 foreign firms agreed to increase their equity investment in joint ventures under the BOI decree, creating a total capital infusion of 20 billion baht. Many Japanese-affiliated auto parts makers put up new capital at the request of Thai partners mired in financing problems. Of companies whose investments were approved by the BOI in 1998, foreign capital exceeded Thai capital for the first time in terms of registered capital. In December 1998, the BOI issued another decree easing regulations on foreign capital<sup>21</sup> for the first time designating the retail industry as a sector qualified for investment promotion measures, as well as companies wholly owned by foreign capital.

While the BOI is an organization that grants benefits (tax privileges etc.) to designated companies for the purpose of promoting direct investment in Thailand, the Alien Business Operations Act stipulates restrictions on foreign capital in Thailand.<sup>22</sup> This very restrictive piece of legislation was written in 1972 amid heightened economic nationalism (its official title is the Announcement of the National Executive Council No. 281). The Foreign Chamber of Commerce long sought a narrowing of regulated industry sectors, and as Thailand came to place greater emphasis on the promotion of foreign direct investment with the economic expansion since the latter half of the 1980s, the Chuan administration in 1993 started work on a draft bill to revise it as part of the comprehensive revisions to the National Executive Council announcements. However, frequent changes of government stood in the way of the bill's enactment, keeping alive the restrictions on foreign capital that were imposed more than 20 years ago.

Only after the currency crisis did the second government of Prime Minister Chuan make a full-fledged revision to the Alien Business Operations Law as part of its efforts to overhaul the legal framework to facilitate foreign direct investment. The revisions had the three principal objectives: (1) to make the law's provisions compatible with the current economic, investment and trade conditions, (2) to promote competition in both domestic and international business to help enhance economic benefits; and (3) to improve consistency with international agreements. The government adopted the revision bill in a

<sup>21</sup> Announcement of the Office of the Board of Investment No. POR. 15/2541 (announced on December 30, 1998). It was a temporary measure, effective from November 23, 1998, through the end of December 1999.

<sup>22</sup> The Alien Business Operation Act is a general law for regulating foreign capital. In cases where there are specific laws restricting the entry of foreign capital into specific industries, such as banking and insurance, they have precedence over it. The Alien Business Operation Act is not applicable to projects for investment promoted by the BOI or approved by the Industrial Estate Authority (Section 12). In industries not covered by the Alien Business Operation Act, projects that need to hold land are subject to regulations by the Land Act that effectively bans the holding of land by foreigners (projects approved by the BOI or the Industrial Estate Authority are exempted from the ban).

cabinet decision of October 1998 and sent it to Parliament. Of the package of bills related to the economic reforms, it was one of the ones that required the longest deliberation before it was enacted. This government bill seeking a substantial deregulation of foreign investment took time to clear parliament because the lower house amended it, adding various conditions and limitations. The Senate also put up strong opposition to the revision, as it had for the bankruptcy law. The bill passed through the lower house in April 1999, and the Senate approved it in August of the same year, but only after some amendment. As the lower house voted down the amendment by the Senate, the joint committee of both houses was called to resolve the differences, and the bill was enacted in October in a form almost identical with the one originally passed by the lower house.

As a result of the revision of the Alien Business Operations Act, the definition of “aliens” is now based solely on the capital composition of majority ownership, and no longer includes the composition of shareholders (Section 4). The revision also removed a regulation that barred foreigners who owned a majority of equity in one Thai corporation from owning equity stakes in excess of one-third in any other Thai corporations. These revisions were aimed mostly at bringing legal provisions into greater conformity with the realities of business activities, and not a drastic change in substance. From the viewpoint of control over corporations, legal provisions concerning the composition of board members and voting rights are important criteria. A provision considered in the course of the Senate debate would have regarded as “alien” any corporation where foreigners had acquired a majority of voting rights or had the right to appoint board members. However, this provision was deleted after both the government and the lower house opposed it.

The revised law substantially reduced the number of regulated business sectors, from 63 to 43.<sup>23</sup> However, most manufacturing industries were not regulated even under the previous law, and Japanese-affiliated companies did not face any substantive obstacles in their operations in Thailand. Among the

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<sup>23</sup> The revised Alien Business Operation Act classifies regulated businesses into three categories: (1) businesses not approved for foreigners (nine businesses); (2) businesses involving national security or affecting arts, culture, or natural resources, that may be approved for operations by foreigners with the approval of the cabinet and with the permission of the Minister of Commerce (13 businesses); and (3) businesses in which Thai nationals are not yet ready to compete with aliens but that may be approved for operations by foreigners with the approval of the Alien Business Operations Committee and with the permission of the Director-General of the Commercial Registration Department of the Ministry of Commerce (21 businesses). Category (1) was not included in the government bill, but was added by an amendment in the lower house. Projects designated by the BOI for promoted investment, even in the categories (2) or (3), are possible with the permission of the Director-General of the Commercial Registration Department. Consequently, approved areas of business have expanded, depending on the actual application and interpretation of legal provisions (Section 12).

regulated businesses, there was a certain degree of opening in construction, brokerage or agency businesses, retail and wholesale operations. In the retail sector, regulations were no longer applicable to projects worth 100 million baht or more if the minimum capital of each store cleared 20 million baht.<sup>24</sup> Screening procedures were substantially improved as well. Decisions on foreign investments are handed down within 60 days after the date of submission of the application, and if the decision is positive, the law specifically requires the issuance of a business license within 15 days after the date of approval (Section 17). The Alien Business Operations Committee conducts an annual review of the list of the business categories (section 9).<sup>25</sup>

## **4. PROGRESS IN LIBERALIZATION/GLOBALIZATION, AND INDUSTRIAL RESTRUCTURING**

### **4.1 Progress in Liberalization and Information Technology**

Beginning in the early 1990s, Thailand achieved economic growth by shifting from protection to the liberalization and deregulation of its financial system and industrial policy. This trend has remained intact despite the currency crisis in 1997, with liberalization making further headway.

The liberalization of the financial system was launched in May 1990, when Thailand declared that it would accept Article 8 of the Articles of Agreement of the International Monetary Fund. Under the first three-year financial development plan (1990-1992), it proceeded with interest rate liberalization, a relaxation of exchange controls, the supervision of financial institutions, development of financial instruments and services, and development of the payment system. The liberalization initiatives under the ensuing second three-year plan (1993-1995) included a saving mobilization plan through provident and pension funds, the extension of financial services to rural areas, and the development of Bangkok as a financial center.<sup>26</sup> In the area of foreign exchange deregulation measures alone, in May 1990, commercial banks were given permission to buy and sell foreign currencies to the public for current transactions without having to seek prior permission from the authorities.

<sup>24</sup> Provisions for minimum capital were introduced to protect medium- and small-scale retail businesses owned by Thai nationals. Another interpretation is that they were written to facilitate investment by foreign firms with technologies and know-how, but not by foreign individual investors.

<sup>25</sup> The Alien Business Operations Committee, chaired by the Permanent Secretary for Commerce, is made up of government officials and representatives of the private sector (Section 23). In order to prevent the committee's decisions from being influenced by politics, the amended bill added as committee members representatives from the business association and representatives of government ministries and agencies other than those related to economic management.

Residents' capital transactions, including foreign exchange accounts, foreign currency lending and investment overseas, were liberalized in stages in April 1991 and in February 1994. With the March 1993 establishment of the Bangkok International Banking Facilities (BIBF), banks mobilized funds from abroad for re-lending to domestic real estate firms and finance companies, sowing the seeds of the financial crisis following the collapse of the bubble economy.

Even after the introduction of the managed float system in July 1997, capital transactions have remained liberalized, as under the new system, rates are determined basically by supply and demand conditions. However, the Bank of Thailand asked commercial banks to cease some types of foreign exchange transactions with non-residents in order to prevent both speculation in the case of foreign exchange transactions which are not based on underlying trade and investment activities.<sup>27</sup> The central bank's policy, while upholding the basic principles of liberalization, is aimed at temporarily regulating abrupt inflows and outflows of capital in order to prevent a recurrence of the currency crisis and to ensure leeway for its domestic monetary policy.

Industrial policy liberalization has also made gradual progress since 1990. Beginning in the latter half of the 1980s, foreign direct investment in Thailand increased sharply, allowing the country to post exports-led economic growth. The economic growth also allowed the domestic market to expand rapidly. This led to a significant transformation of import substitution-oriented industries, which had long been contained by the narrowness of the domestic market, and to the upgrading of Thailand's industrial structure. Up until the 1980s, various protective measures were employed to protect infant domestic industries from domestic and foreign competition. However the expansion of the domestic market prompted the government to relax protective measures covering various import industries in order to promote a more efficient allocation of resources and to achieve a more competitive environment in the industrial sector (Higashi [2000a]). Firstly, quantitative restrictions on major import products were replaced by tariff measures, and the tariff levels were lowered gradually. Permission on establishing new plants or expanding existing capacity were relaxed in a given period, and eventually restrictions on the number of producers were abolished. This policy aims to reduce monopoly power, in order to encourage competition and thereby boost production efficiency in industries which were formerly represented by just a

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<sup>26</sup> However, the establishment of local commercial banks and the granting of licenses for the upgrading of finance companies to commercial banks was put off, and never became reality because of the outbreak of the currency crisis.

<sup>27</sup> The Bank of Thailand requested the co-operation of financial institutions in limiting the provision of baht liquidity or creating any contingent liabilities which would result in paying foreign exchange in the future to non-residents, in cases where such transactions had no underlying trade or investment activities, to an amount not exceeding 50 million baht per counterparty (Announced on 4 October 1999).

few producers. Local content requirements that required manufacturers to use domestically procured parts and materials for their products were eliminated by 2000, under the agreements of the World Trade Organization (WTO).

Amid this steady current of economic liberalization, rapid advance have been made in information and communications technologies, pushing companies out side of national borders and throwing them into the international marketplace to face fierce competition from global rivals. In fact, the outbreak of the currency crisis in Thailand can be traced to a great extent to the speed of transnational movements of capital, made possible by advances in information technology, just as the country was deregulating foreign exchange and capital transactions. The direct linkage to global financial markets pressured companies to reform their management and organizations in order to meet appraisals by investors and shareholders by introducing the idea of corporate governance. In the process of corporate reform, companies launched business restructuring, and accelerated moves toward strategic alliances, global mergers and acquisitions, leading to a rapid, wholesale industrial restructuring.

In order to survive within global competition, companies are working to reorganize and restructure their businesses by introducing sophisticated information and telecommunications technologies. The rapid spread of e-commerce has been instrumental in making business operations more efficient. The life cycles of products are getting shorter, while an increasing number of companies are using supply chain management (SCM) systems to better respond to their customers' needs. The ability to build and operate these computer-based management systems has become a determinant of the competitive edge of companies; those that fail to make adequate responses have begun to fall behind. Financial institutions in Thailand are competing with one another to introduce e-commerce while stepping up restructuring efforts involving consolidating branches and cutting payrolls. CP Group, in conjunction with Siam Cement Group and others, has decided to develop an e-commerce B-to-B system. In the retail sector, foreign-affiliated companies are making their presence felt in physical distribution by taking advantage of their logistics centers, putting heavy pressure on the operations of existing retailers.

#### **4.2 The Stimulation of Industrial Reorganization by Foreign Investment**

With the help of progress in liberalization and information technology, big businesses of major developed countries, in bids to grow out of their saturated home markets, have advanced into Thailand and other Southeast Asian countries, which appear to be promising markets after achieving economic growth and improved national income. Foreign firms have competed to make investments in Thailand since before the currency crisis. The pace of foreign investment even picked up after the crisis. Thai companies, which were burdened

with increased debts after the baht's plunge the country's growing financing difficulties, were under intense pressure to sell off operations to foreign firms or to seek strategic alliances with them. With the Thai government preceeding with deregulation, foreign companies looking for investment opportunities in Thailand found a golden chance to buy into the country. In the meantime, global corporate mergers and consolidations have been taking place in major industry sectors as companies search for scale, and Thailand has naturally felt the impact of this scrambling to find new markets. The following portion of this paper examines Thailand's cement, retail and telecommunications sectors, where the presence of foreign investment is particularly conspicuous.

Cement production has developed as a domestic industry because of the high cost of transportation. The government has kept a watchful eye on the construction of new cement plants as well as on new entrants into the industry, in order to prevent an oversupply. As a result, it allowed market dominance by three suppliers for many years. In 1989, However, to cope with the shortage of supply caused by the construction boom in the high growth period, the government eased the entry restrictions, and fully liberalized the market by 1991. At present, there are seven cement producers, with a combined capacity of 43.6 million tons in 1997, up from 22.7 million tons in 1992 (see Table 2-8). Given the domestic cement consumption of 36.8 million tons in 1996, there was a supply glut even before the currency crisis. As domestic consumption plunged after the crisis, this overcapacity became a serious issue. Cement makers are now struggling to raise the productivity of their plants, while taking advantage of enhanced price competitiveness to increase exports.

Siam City Cement PLC, the country's second largest producer, sold a 25% equity stake in the company to Holderbank of Switzerland (Phu Chatkan [2000a]). The Ratanarak family, the largest Thai shareholder, needed funds to infuse more capital into the Bank of Ayudhaya to rehabilitate it and was already withdrawing from non-core businesses, including a sale of holdings in Karat Sanitaryware PLC.<sup>28</sup> Holderbank paid just 160 million dollars to acquire three cement plants with the combined capacity of 12 million tons,<sup>29</sup> while gaining complete control over the company by sending in four of the

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<sup>28</sup> In September 1999, Siam City Cement reached agreement with 63 creditors on the restructuring of 501.8 million dollars of foreign currency debts and 1.5 billion baht worth of baht loans. With the capital participation by Holderbank also helping to pave the way for its business restructuring, Siam City Cement gained the ability to raise the necessary funds and refinance existing borrowings, taking out a long-term syndicated loan worth 240 million dollars and issuing bonds worth 5 billion baht in November 1999.

<sup>29</sup> The construction of a new cement plant is said to require at least 120 million to 200 million dollars. Holderbank's purchase of existing facilities was a very efficient move in building a base for cement production in Thailand.

**Table 2-8 Cement Industry in Thailand (1999)**

Number of Company	Founded	Registered Capital (million baht)	Number Employees	Production Capacity of Cement	
				(tons/year)	(%)
Siam Cement Industry	1913(1998)	8,600	3,185	23,360,000	44.6
Siam City Cement Industry	1969	3,000	2,816	12,300,000	23.5
Jalaprathan Cement	1956	1,200	741	2,348,000	4.5
Asia Cement	1989	7,800	753	4,800,000	9.2
TPI Polene	1987	5,307	3,000	9,000,000	17.2
Saraburi Cement	1990	700	440	480,000	0.9
Samukkee Cement	1991	300	40	125,000	0.2
Total				52,413,000	100.0

company's seven executive directors, including the president.<sup>30</sup> Holderbank is using an affiliated trader to increase cement exports to Western Africa and the U.S. market, while making Thailand a base for expansion into the Asia-Oceania region and establishing joint ventures in Vietnam and the Philippines.

Jalaprathan Cement PLC, the smallest of the three cement makers that once controlled the domestic market, also sold an equity stake of 54% to Ciements Francais (under the wing of Italcementi of Italy) in 1998 (Phu Chatkan [2000a]). Ciements Francais has sent in a senior executive director to take charge of management policy and finance, assisting the company in its management reform efforts. Jalaprathan Cement, with only a small production capacity, is placing strategic emphasis on niche market, and also aims to strengthen exports. Cemex of Mexico, the world's third biggest cement maker, has purchased Saraburi Cement PLC, and is also considering capital participation in TPI Polene PLC, another cement maker in the process of rehabilitation.<sup>31</sup> The trend toward industrial restructuring stimulated by foreign companies even touched Siam Cement Industry Co., Ltd., the uncontested

<sup>30</sup> The four executive directors sent by Holderbank filled the posts of president, vice president for cement business, director for corporate finance, and director for information technology. Holderbank also has four out of the 10 directors.

<sup>31</sup> TPI Polene PLC is a cement company belonging to the major petrochemicals concern TPI Group. It agreed with 44 creditors in December 1999 on the orderly debt workout framework for restructuring 44.8 billion baht of debts. The accord was later turned over to court proceedings to gain binding force. In February 2001, the Central Bankruptcy Court approved the debt restructuring plan for rehabilitation. In October 2001, Cemex announced a plan to acquire an equity stake of 72.67% in TPI Polene, but no agreement has been reached with a consortium of creditor banks, due to differences over the terms of the deal.

Production Capacity of Clinker		Number of Kiln	Foreign Capital
(tons/day)	(%)		
60,940	42.4	16	
38,500	26.8	6	Holderbank (25%)
6,100	4.2	3	Ciments Francais (54%)
13,000	9.0	2	Ciments Francais
23,500	16.3	3	Cemex or Holderbank?
1,400	1.0	3	Cemex
320	0.2	2	
143,760	100.0	35	

industry leader, which was not burdened with fears of being gobbled up. It is relying on a Cemex-affiliated trading company for sales of U.S.-bound exports.

In Thailand's retail industry, CP Group and Central Group were once locked in a competition to open new outlets. After the currency crisis, however, both groups sold off their main businesses to foreign companies and are now reviewing their business strategies. In order to repay its huge debts, CP Group is going through a restructuring process designed to concentrate its management resources on agribusiness, such as feedmill, broilers and prawns, and to get out of the retail sector with the exception of the Seven-Eleven convenience store chain. Lotus, which was in charge of CP Group's supercenter business, was sold to Tesco of Britain, which is now in the driver's seat and expanding the network of outlets. Similarly, the Sunnies supermarket business was acquired by Delhaize Group of Belgium (see Table 2-9).

Central Group opted to keep the traditional department store business at the core of its operations, selling off other retail interests to foreign companies. The group sold its holdings in the supermarket chain Tops, a joint venture with Royal Ahold of the Netherlands, and in the hyper market joint venture with Carrefour of France, each to its respective partners. Casino Group of France acquired a 68% equity stake in the supercenter operations Big C, reducing Central Group's status to a minority shareholder. CP Group and Tesco are maintaining their business alliance with plans for a joint foray into the Chinese market, while Central Group and Casino are also keeping a cooperative relationship, and considering a joint business expansion into the Indochinese region. In both the alliances, the equity stakes of the Thai companies declined each time the joint ventures increased their capital, making it

**Table 2-9 Retail Business in Thailand**

Name of Store	Shareholders after Crisis	number of stores(1996)	Shareholders before Crisis	number of stores(2000)	
Lotus	CP Group	100%	CP Group	6.8%	24
			Tesco (Thailand)	93.2%	
Big C	Jirathiwat Family	32.63%	Jirathiwat Family	13.4%	23
	Robinson Dept. PLC	14.55%	Casino Group	67.9%	
	Land & House PLC	10.80%	Others	18.7%	
	others	12.02%			
Carrefour	Central (CRC)	40%	SSCP holding	60%	11
	Carrefour	40%	Carrefour	40%	
	SSCP holding	20%			
Tops	Central Retail	51%	Royal Ahold	100%	40
	Royal Ahold	49%			
Food Lion	The Mall	45%	Delhaiza group	49%	20
	Delhaiza group	45%	Food Lion Inc.	51%	
	Saha Group	10%			

Source: Thai Newspapers and Endo [2002]

less and less likely that the Thai partners would regain management control in the future. In Thailand's retail sector, the aggressive expansion of supercenter operations by foreign-affiliated companies, on the strength of low retail prices, is increasingly forcing department stores and other traditional retail businesses into a tight corner.

In anticipation of global competition following the full liberalization of the telecommunications industry, local corporate groups have formed strategic partnerships with foreign companies, acquiring needed funds and know-how while carrying out management reform. After the currency crisis, alliance with foreign capital have become an increasingly decisive factor influencing competitiveness in the home market. The mobile phone market was long monopolized by Advanced Info Service PLC (AIS) of Shin Corporations PLC (Shinawatra Group) and UCOM (United Communication Industry PLC) Group of Total Access Communication PLC (TAC), after these corporate groups obtained concessions from state enterprises. While Samart Corporation PLC established Digital Phone Co., Ltd. (DPC) after obtaining a GSM1800 cell phone business concession, it accepted equity participation by Telecom Malaysia even before starting its cell phone operations. TAC all but completed its debt restructuring in the past two years, and accepted capital participation by Telenor of Norway as a business support partner in May 2000. Meanwhile, AIS, though free from serious debt problems, tied up with Singapore Telecom in order to raise funds to finance the expansion of its telecommunications networks (see Table 2-10). Shin Corporations PLC now has DPC under its control.

**Table 2-10 Telecommunication Industry in Thailand****(a) Mobile Phones Operators**

Operator	System	First Year Operation	Market Share	Joint Venture	Foreign Investment
AIS	NMT900	1990	48.3%	Singapore Telecom (Feb. 1999)	8,280 million baht <20%>
	GSM900	1994			
TAC	AMPS800	1991	39.2%	Telenor (May 2000)	9,956 million baht <30%>
	PCN1800	1994			
DPC	GSM1800	1997	7.1%	Telecom Malaysia (June 1997)	48%
TOT	NMT470	1986	2.8%		
CAT	AMPS800	1987	2.6%		
	CDMA	1998			

**(b) Telecommunications Operators**

Holding Company	Affiliate	Joint Venture	Investment
Shinawatra	Advanced Info Service (AIS)	Singapore Telecom (1990)	5.4%
UCOM	Total Access Communication (TAC)	Telenor (May 2000)	10,184 million baht <24.8%>
Samart		Telecom Malaysia	24.99%
CP Group	Telecom Asia Corporation (TA)	Bell Atlantic	
Jasmine	Thai Telephone and Telecommunications (TT&T)	NTT West Japan	

Source: Thai Newspapers and Rawadee and Apirudee [2001]

**4.3 Industrial Restructuring Caused by Overcapacity**

Problems of overcapacity were already apparent even before the currency crisis as the industrial liberalization policy had opened the way for many companies to launch into promising industry sectors. The overcapacity came to the fore more evidently after the consumption slump in the wake of the currency crisis, making supply adjustments necessary for the country's industrial revival. The BOI began to take support measures for the five industry sectors of steel, petrochemicals, ceramics, paper-pulp and textiles in the latter half of 1999 (Board of Investment [1999:12-13]). These industries commanded high ratios of investment by Thai companies, many of which were confronted with serious debt problems. As common support measures for all the five sectors, the BOI proposed import duties on raw materials and machinery in order to cut costs and boost competitiveness. For the steel industry in particular, the

BOI called for restructuring through mergers and consolidation.

In 1988, the government removed entry restrictions on steel bar production in order to meet expanding demand. In 1991, liberalization in principle was given to the establishment and expansion of steel bar plants using billets as materials. This liberalization led to increased investment by new entrants, and as a result, the production capacity for steel bar rose sharply from 1.5 million tons in 1991 to 4.99 million tons in 1996, while domestic demand remained at 2.37 million tons in 1997. The problem of overcapacity deepened after the currency crisis. While the combined capacity of 15 makers reached 4.88 million tons in 2000, actual production was just 1.81 million tons. In order to help resolve the excess capacity, Siam Cement Group, NTS Group and Bangkok Steel Group began a process of consolidating their electric furnace mills.<sup>32</sup> By consolidating existing facilities through the inter-group mergers, they plan to have each plant specialize in producing a specific product. The BOI is urging a government committee not to treat their consolidation deal as a violation of the Business Competition Act. However, it is questionable how effectively the Thai government, as a mediator, can influence negotiations among private companies, given the fact that it has never before played much of a role in the adjustment of supply and demand conditions in any given industry.

The situation is more or less the same for steel sheets. The BOI shifted to a policy of liberalization in 1994, as the country's economic growth led to a fast expansion of demand, and new entrants pressured the government hard for deregulation. Until then, in consideration of the massive investment required in the business of steel sheet rolling, Sahaviriya Group had obtained in 1989 the exclusive rights of operations. Following deregulation, many Thai companies launched ventures into the hot-rolled and cold-rolled steel sheet business (see Figure 2-1). For hot-rolled sheets, NTS Group and Siam Steel Pipe Group began operations with mini-mill, lifting the combined capacity of the three plants to 5.7 million tons, against actual production of 2 million tons in 2000.<sup>33</sup> On top of the problem of overcapacity, the two latecomers, saddled

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<sup>32</sup> Siam Iron and Steel and Siam Construction Steel, both in the Siam Cement Group, and Nakornthai Steel of NTS Group are set to merge first by the end of 2001, and the steel bar division of Bangkok Steel Group is to join after debt restructuring is completed. Namheng Steel, which originally planned to merge with them, is unlikely to join after all because of a hitch in its debt disposal.

<sup>33</sup> Sahaviriya Steel Industry of Sahaviriya Group began operating in 1994 with an annual capacity of 2.4 million tons, procuring slabs from overseas for steel sheet production. On the other hand, Nakornthai Strip Mill (with an annual capacity of 1.5 million tons) of NTS Group and Siam Strip Mill (with an annual capacity of 1.8 million tons) of Siam Steel Pipe Group operate with the mini-mill methods using cheap scrap iron as materials. This allows them to reduce production costs with higher capacity utilization rates. However, the production facilities of the two latecomers are near a standstill because of problems with repairs and procurement of scrap iron as well as excessive liabilities.



with excess debts, are now going through rehabilitation procedures,<sup>34</sup> This makes it likely that consolidation, integration and other ideas will emerge to cope with the excess capacity.

The steel sheet market was hit hard in 2001 by slumping domestic demand, falling exports to the United States, and price drops of imported products. In the face of deteriorating operations under the influence of these factors, domestic producers are piecing together measures to counter cheap imports and to deal with problems with the U.S. export market. Hot-rolled sheet makers jointly asked the government for trade defense measures, and the BOI set up a working group of officials from four government agencies concerned to investigate the situation. In November 2001, it announced a decision to impose a surcharge on imported steel sheet for a period of one year.<sup>35</sup> Separately, the Ministry of Commerce is preparing to invoke safeguard measures against imports for three years if the damage to domestic producers is substantiated and they are ready to take steps to increase their competitiveness. Thai Cold Rolled Steel Sheet PLC, meanwhile, filed an anti-dumping complaint against Russia, Kazakhstan and Argentina, claiming the damage from cheap imports from the three countries.<sup>36</sup> The Ministry of Commerce accepted the complaint in July and launched an investigation into whether the anti-dumping duty should be imposed. On the other hand, cold-rolled steel sheet being shipped to the U.S. market may become the target of anti-dumping and countervailing duties under Section 201 of the U.S. Trade Act. Thai makers have jointly hired lawyers to collect relevant information. The newly created Iron and Steel Institute of Thailand is now responsible for the preparations of materials for the BOI's imposition of the surcharge on steel sheet imports as well as for the hiring of lawyers to deal with the U.S. market. It is taking up the role of leading joint public-private sector efforts to resolve prob-

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<sup>34</sup> Both firms are in rehabilitation procedures at the Central Bankruptcy Court. A 37.8 billion baht debt restructuring plan for Nakornthai Strip Mill was approved at a meeting of creditors in June 2001. A similar plan for Siam Strip Mill, mapped out by its rehabilitation planner, was rejected in November 2001.

<sup>35</sup> The working group is made up of officials from the Ministry of Finance (MOF), the Ministry of Commerce (MOC), the Ministry of Industry (MOI), and the BOI. Since the import surcharge is a temporary measure solely intended for the protection of the domestic industry, it may constitute a violation of WTO trade rules.

<sup>36</sup> In an anti-dumping complaint, a plaintiff needs to prove damage in domestic sales. In Thailand's cold-rolled steel sheet sector, Thai Cold Rolled Steel Sheet (set up by NKK, Sahaviriya Group and others) started operation in 1997, and it was not long after that latecomers Siam United Steel (set up by Nippon Steel, Siam Cement Group and others) and BHP (of Australia) began operating.

<sup>37</sup> Natural gas production was the beginning to Thailand's petrochemical development, with the first-phase program, led by the government, starting in 1982. The state enterprise Petroleum Authority of Thailand (PTT) contributed 49% of capital in establishing National Petrochemical Corporation (NPC), whose olefin center began production in 1990. Under the second-phase program announced in 1987, PTT and others established Thai

lems related to the steel industry's development.

In the petrochemical sector, meanwhile, the government began the phased introduction of liberalization measures in 1992, as the country's economic growth increased the demand for synthetic resin, a material used in key industries. In 1995, the government gave the go-ahead for the establishment of new plants and expansion of existing capacity, both upstream and downstream, triggering a rush of new investment plan announcements by petrochemical makers (see Figure 2-2). Since construction of upstream plants requires massive initial investment, affiliated companies of state enterprise (NPC, TOC, etc.) had led operations until then.<sup>37</sup> The liberalization prompted private-sector operators of downstream plants to embark on construction of olefin plants in a bid to reduce costs through the vertical integration of production.<sup>38</sup> However, the outbreak of the currency crisis and the devaluation of the baht imposed heavy debt burdens on these petrochemical companies.<sup>39</sup> In particular, Thai Petrochemical Industry PLC (TPI) incurred debts of 3.8 billion dollars in, and in 2000 the Central Bankruptcy Court approved a rehabilitation procedure for the company.

Immediately after the currency crisis, the overcapacity of petrochemical plants became an issue in the face of slowing domestic demand. Plans were aired for mergers and the integration of operators to consolidate existing facilities and cut production costs through economies of scale. NPC and TOC are both affiliates of a state enterprise that runs olefin plants, and their merger was described as the most efficient option as they share the same largest shareholder, the Petroleum Authority of Thailand (PTT). NPC, for its part, proposed the integration of business with BPE of Bangkok Bank Group, which did not have any plans to go into upstream operations, to avoid overlapping and wasteful investment.<sup>40</sup> It proposed to do this in exchange for its indepen-

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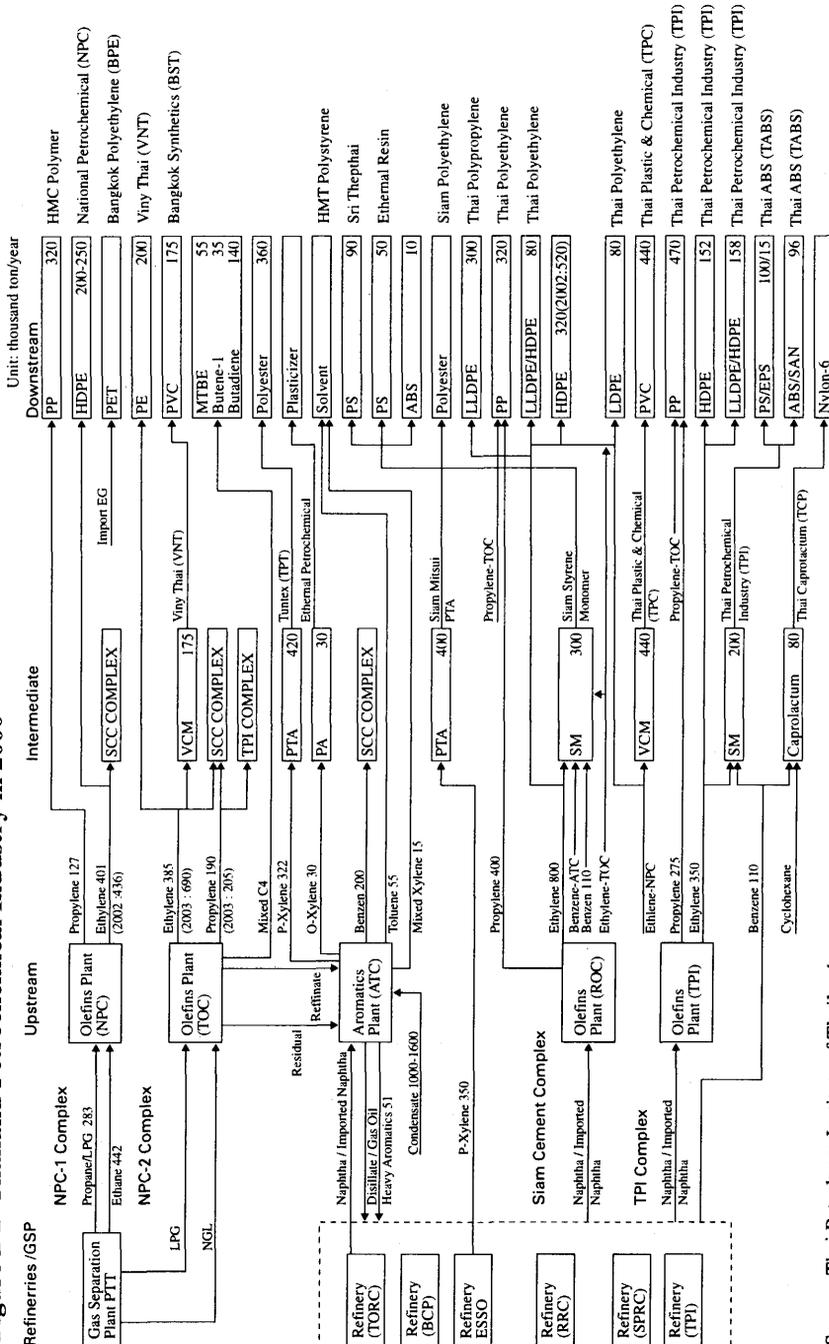
Olefins (TOC) for light naphtha and Aromatics (Thailand) PLC (ATC) for heavy naphtha. TOC's naphtha cracker went on stream in 1995, while ATC's aromatics plant started operating in 1997.

<sup>38</sup> Thai Petrochemical Industry (TPI) Group constructed its own petrochemical complex, including an oil refinery, in Rayong Province. Its olefin plant went into operation in 1997 to complete the vertical integration of petrochemical operations. Siam Cement Group also set up Rayong Olefins (ROC), with its olefin plant starting operation in 1999. The group is also seeking an integrated operation, making equity investment in Thai Plastic and Chemicals (TPC) that manufactures polyvinyl chloride.

<sup>39</sup> ATC agreed with creditors on restructuring debts of 370 million baht, given a debt re-scheduling of two years, while TOC agreed on the re-scheduling of 332 million baht with a consortium of creditor banks. Both agreements were anchored by PTT, which pledged support through capital increases and cash flows. NPC's business operations are stable relative to its peers because it has a contract with PTT to purchase the material ethane at netback prices

<sup>40</sup> Bangkok Bank Group (Bangkok Polyethylene (BPE) etc.) intended to construct an olefin plant initially on its own, and then jointly with Siam Cement Group, but both plans fell through. After failing to reach an integration accord with BPE, NPC announced plans to build an HDPE plant single-handedly.

Figure 2-2 Thailand Petrochemical Industry in 2000



Source: Thai Petroleum Institute of Thailand

dent advance into the downstream operation of polyethylene production. However, these merger and integration plans have all been shelved, either because the potential partners fell into serious debt problems or because the parties could not agree on merger ratios. Consolidation efforts also came to a standstill in the petrochemical industry because the market staged a brief recovery in 1999 and the sector's management problems did not become as serious as they were in the steel industry, since the petrochemical makers had a measure of success in increasing exports. However, the excess capacity has yet to be eliminated and new large petrochemical plants will soon go into operation in neighboring countries in Asia, keeping open the possibility that mergers and integrations of operations will eventually materialize.

## **5. RESTRUCTURING OF THAI COMPANIES AFTER THE CURRENCY CRISIS**

### **5.1 Focusing of Management Resources**

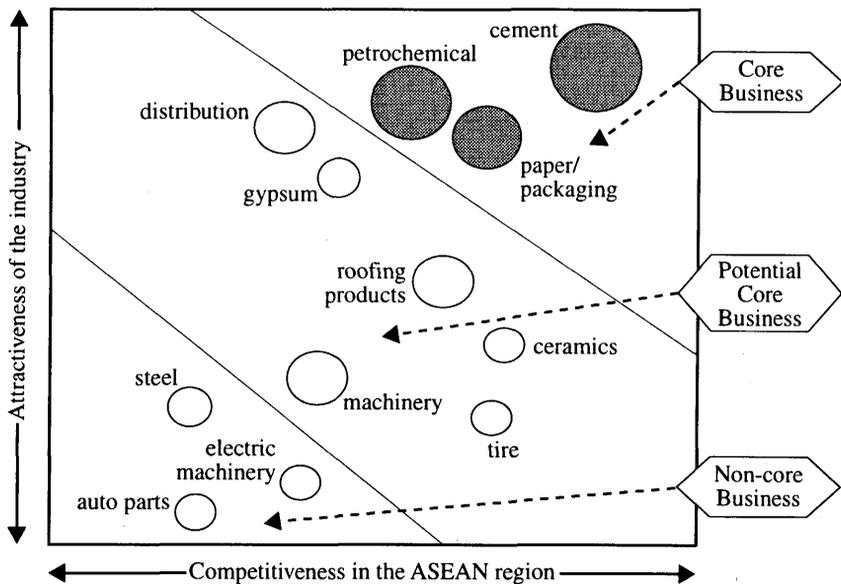
In the intense race, before the currency crisis, to expand investment in anticipation of continued economic growth, corporate groups in Thailand were pushing ahead with the vertical integration and/or diversification of their businesses. The sudden slump of the economy then led to an oversupply problem, forcing them to retrench or suspend many of their operations, while the devaluation of the country's currency, the baht, left them with huge liabilities. Some of the excellent companies among Thai corporate groups moved quickly after the crisis to concentrate their management resources on specific business areas where they could efficiently utilize accumulated technologies and know-how while selling off or handing over management rights of non-core operations in major business restructuring and organizational reforms. These companies, in bids to improve their financial structure, also refinanced existing debts with bond issues, shaking themselves free from dependence on foreign currency-denominated borrowings and shifting to the procurement of necessary funds through direct-finance methods.

Faced with serious debt problems in the wake of the currency crisis, Siam Cement Group decided to embark on drastic business restructuring and organizational reform. While commissioning the major consultant McKinsey Company with a program for business restructuring, it organized an in-house working group to map out reform steps. At the end of 1998, it announced the following major structural reorganization (Siam Cement [1999], Phu Chatkan [1999]). Siam Cement Group designated the cement, petrochemical and paper/packaging operations, which together account for 60% of the group's total sales, as core businesses. It also designated building products, ceramics, gypsum and distribution as operations with potential. The corporate structure

was reorganized into eight operating companies handling the core businesses and those with potential, and a holding company (head office) charged with coordinating the interests of the whole group.<sup>41</sup> Each operating company was granted substantial management powers over its business, while the head office was given the task of focusing on human resources development and other matters to ensure centrally coordinated and efficient operations. The group decided to withdraw from non-core businesses such as steel, auto parts, electric machinery and metals, by selling off equity holdings to foreign partners as its of restructuring efforts (see Figure 2-3).

In announcing the major business restructuring program, Siam Cement Group launched a non-deal road show to explain the program in various parts

**Figure 2-3 Business Restructuring of Siam Cement Group**



“Source: Suehiro [2002], interview at Siam Cement Group”

<sup>41</sup> The eight operating companies are for cement (10 firms under its wing), petrochemicals (23 firms), paper/packaging (20 firms), building products (15 firms), ceramics (13 firms), gypsum (six firms), distribution (seven firms), and other non-core businesses (50 firms). These eight operating companies and a tire company were placed under the holding company (the head office). The head office, which was originally the holding company with cement operations, the paper/packaging company and the tire company were already public limited companies prior to the corporate restructuring.

of the world. It did so with the belief that in the already highly liberalized business environment, it is vitally important to seek investors' understanding for policies of disclosing business information to ensure transparency and good corporate governance and seeking to maximize value to shareholders (Wirat [2000:197-201]). In early December 1998, company officials toured Singapore, Hong Kong, Britain and the United States, holding over 50 sessions with a total of 102 investors to brief them on the business restructuring program.<sup>42</sup> The group was apparently given high marks for such efforts, and successfully floated bonds worth 50 billion baht in 1999.<sup>43</sup> The bond issuance allowed the company to reduce foreign currency-denominated borrowings and short-term debts, contributing to a substantial improvement in its financial profile.

At the end of 2000, Siam Cement Group again announced the following business restructuring (Siam Cement [2001], Phu Chatkan [2000h: 68]). Its operations would be reorganized into six groups, consisting of the three core businesses of cement, petrochemical and paper/packaging and the three sub-core businesses of building products (including gypsum), ceramics and distribution. Separately, the group would organize two operating companies responsible for non-core operations and real estate business. The former would be in charge of the continued sale of equity holdings in non-core businesses to foreign partners, while the latter would seek out buyers for its real estate interests to reduce the group's involvement in the sector (see Figure 2-4). The new reorganization initiative was designed to make the group's organizational management more transparent, efficiently utilize management resources, and enhance business competitiveness.

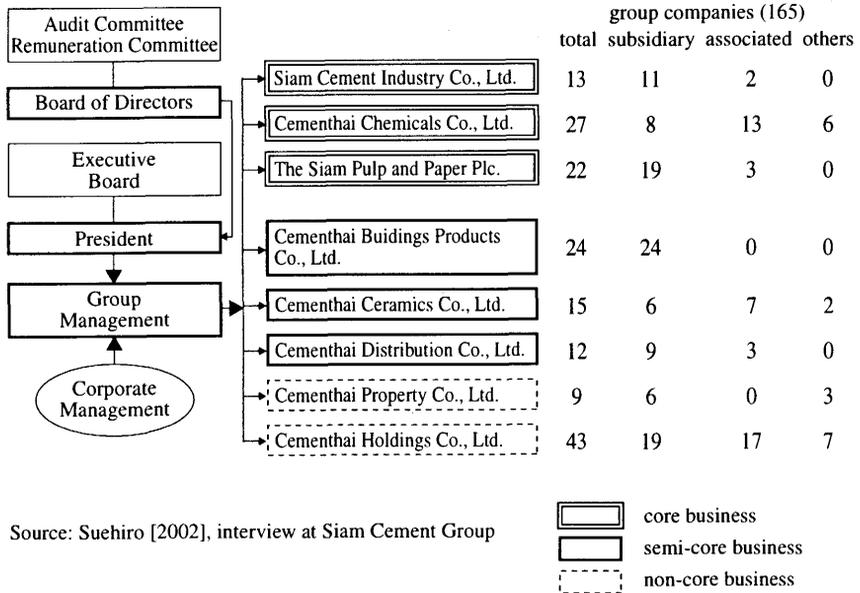
Similarly, CP Group asked McKinsey Company to map out business restructuring plans for consolidating its operations. CP, which was originally an agribusiness concern that achieved rapid growth through the feedmill, broiler and prawn businesses, diversified into distribution, telecommunications, petrochemicals and other operations during the economic growth period, and also expanded into China. But the problem of excess debts following the currency crisis forced it to rebuild its business base by returning to its core of agribusiness. However, there were more than 10 agribusiness-related group companies, and their complicated and entangled capital ties and business interests made the organizational structure very hard to understand to outsiders. The group decided to reorganize itself by transforming Charoen Pokphand

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<sup>42</sup> Non-deal road shows with investors around the world on its business restructuring were organized on the advice of U.S. investment bank Goldman Sachs, with which Siam Cement Group concluded an advisory contract. These sessions were not intended for the marketing of equities or bonds, but were solely aimed at winning better understanding by investors for the group's business restructuring program.

<sup>43</sup> However, the program to increase registered capital was postponed because the allotment price for new shares failed to reach satisfactory levels.

**Figure 2-4 Business Structure of the Siam Cement Public Company Limited**



Source: Suehiro [2002], interview at Siam Cement Group

Foods PLC (CPF), an exchange-listed company, into a superordinate entity with equity holdings in most of group’s companies (see Figure 2-5).<sup>44</sup>

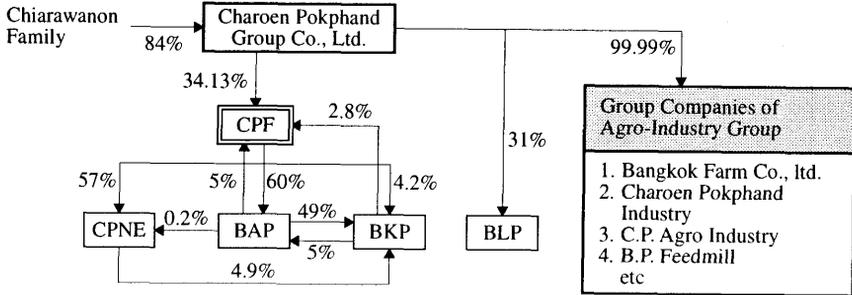
The reorganization was designed to consolidate administrative and other back-office operations, including agribusiness marketing, at CPF, and at the same time to make it easier for the group to raise needed funds by winning the confidence of investors through stepped-up disclosure following the management reform of CPF (Phu Chatkan [2000i:113]). As these reform efforts proved successful, CPF gained the ability to issue bonds and also increased its equity capital, making it possible to refinance existing debts and raise fresh funds for the expansion of agribusiness operations.

In addition from the core of agribusiness, CP Group is giving priority to the retail and telecommunication sectors. In order to concentrate its management resources in the retail sector, it sold most of its equity in Lotus Supercenter

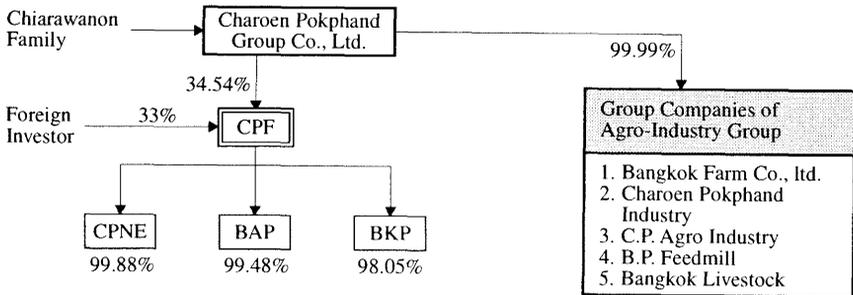
<sup>44</sup> CP Group has four exchange-listed agribusiness firms: Charoen Pokphand Feedmill PLC (CPF); Bangkok Agro-industrial Products PLC; Bangkok Produce Merchandising PLC; and Charoen Pokphand Northeastern PLC. The group carried out the reorganization to let CPF own equities in and supervise operations of the three other companies. CPF changed its corporate name to Charoen Pokphand Foods PLC in December 1999, using the catch phrase “Kitchen of the World” as its corporate strategy (Phu Chatkan [2000d]).

**Figure 2-5 Agri-business Restructuring of CP Group**

(1) before crisis (1997)



(2) after crisis (1999)



Note: CPF Charoan Pokphand Foods PCL  
 CPNE Charoan Pokphand Northeastern PCL  
 BAP Bangkok Agro-Industrial Products PCL  
 BKP Bangkok Produce Merchandising PCL  
 BLP Bangkok Livestock Co., Ltd.

Source: Suehiro [2002], Form 56/1 Report submitted to the SET (March 1999)

and other businesses, with the exception of Seven-Eleven, to foreign partners. With its expanded network of more than 1,000 outlets, Seven-Eleven is selling the group's agricultural products, as well as services suitable for the Internet era. CP Group's telecommunication operations are built around Telecom Asia Corporation PLC (TA), which operates a network of 2.6 million telephone circuits in the Metropolitan area, and United Broadcasting Corp. PLC (UBC), a cable television concern, both public limited companies.

## 5.2 Debt Restructuring

Only a handful of excellent companies could resolve excess debt problems caused by the currency crisis by restructuring businesses on their own. The rest of indebted companies conducted debt restructuring negotiations with creditors. Debt restructuring negotiations were first held within the CDRAC-supervised framework of debt workout scheme. When debtors and creditors failed to reach agreements, or when restructuring plans required binding force, negotiations were shifted to the framework of court proceeding, with corporate rehabilitation procedures overseen by the Central Bankruptcy Court. Debt restructuring plans include debt rescheduling, reductions or exemptions on payment of debt principal and overdue interest, extension of repayments, debt-equity swaps, or a combination of these measures. In order to reach accords with creditors, debtors felt that they needed to focus on business areas potential competitive edge and to make clear the responsibility of top management (or major shareholders) for their business plight.

TAC, a mobile phone operator in the major telecom carrier UCOM Group, reached an agreement in 1998 with 50 creditors on the six-year rescheduling of payments on debts of 538 million dollars. However, the company faced the immediate need to redeem some 400 million dollars worth of maturing bonds in 2001 and invest 4 billion baht in the expansion of service areas for its digital mobile phone operations. This made it necessary for the company to find a foreign business partner. In May 2001, Telenor of Norway agreed to acquire a 30% equity stake in TAC for 530 million dollars. This allowed TAC to boost its business base in preparation for the telecom market liberalization.<sup>45</sup>

The CP Group-affiliate TA, which operates a network of 2.6 million telephone circuits in the Metropolitan area, saw its financing suffer under the influence of the currency crisis, and was forced to suspend repayments of its debt principal in May 1998.<sup>46</sup> After debt restructuring talks under the supervision of CDRAC, in December 1999 the company reached an agreement with 45 creditors to reduce the debt amount of 61.79 billion baht to 55.05 billion baht. Secured creditors agreed to reschedule debts of 48.5 billion baht, and to receive principal repayments over six years beginning from the second quarter of 2002. With regard to unsecured debts of 13.29 billion baht, creditors that wanted immediate cash paybacks agreed to a debt buyback at a discount of some 50%, with the remaining portion of 6.55 billion baht to be paid in promissory notes. Kreditanstalt für Wiederaufbau (KfW), the biggest of secured creditors, acquired preferred shares for 150 million baht; the money paid for these shares was to be used for repayments to unsecured creditors.

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<sup>45</sup> Telenor invested 189 million dollars to acquire an equity stake of 24.9% in UCOM, the parent company of TAC.

<sup>46</sup> TA continued to make interest payments, however.

KfW gained an equity stake of 24% in TA, becoming the second biggest shareholder after CP Group, whose own equity share was to fall from 36% to 27.36%. But TA was given an option to buy back the shares from KfW over the following eight years (Phu Chatkan [2000b]).

The major real estate developer Land & House PLC expanded its operations amid Thailand's rapid economic growth. Its businesses included town houses, condominiums, golf rinks, shopping centers and finance and insurance. On top of these, the company had investments in Indonesia and the Philippines. However, the currency crisis caused its external debts to swell by 40%, and the company reported losses in 1997 for the first time since it became listed in 1989. The subsequent business restructuring reduced the number of group affiliates from over 20 to just five joint ventures and six investment firms,<sup>47</sup> while the parent company opted to specialize in home building. Through these efforts, Land & House was able to gradually reduce its losses, and returned to profitability in 2000. The company's president, Mr. Anan, decided to seek a capital infusion from a foreign partner, and Government of Singapore Investment Corp. (GIC) now owns a 19.33% share in the company, as the second largest shareholder after Mr. Anan, who has an equity share of 23.38% (Phu Chatkan [2001a]).

The major oil refiner Thai Oil Co., Ltd. was also burdened with mountains of interest-bearing debts. After a debt restructuring accord was worked out under the CDRAC framework, the Central Bankruptcy Court approved the rehabilitation plan in March 2000.<sup>48</sup> Under the debt waivers and debt-equity swaps, the firm's total debts were reduced from 2,290 million dollars to 1,412 million dollars, to be repaid by Thai Oil Co., Ltd. over 14 years after a three-year grace period. The Petroleum Authority of Thailand (PTT), which held 49% of the company's shares, along with creditor banks, agreed to provide 250 million dollars each to boost its equity capital. Meanwhile, creditors with combined claims of 315 million dollars who were not receptive to debt-equity swaps or debt rescheduling were allowed to choose immediate debt buybacks, but at a discount of 45%. Thai Oil Co., Ltd. also sold equity holdings in an electric power subsidiary as part of its business restructuring. The debt restructuring of this firm was made possible after state enterprise PTT clearly demonstrated its supportive attitude by agreeing to contribute capital and swap overdue payments for crude oil into equity shares.

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<sup>47</sup> Land & House PLC owns 30% to 40% of the joint venture companies, while its stakes in the invested companies are smaller than 10%, with the exception of one firm.

<sup>48</sup> Thai Oil Co., Ltd. had many as 124 creditors. A group accounting for 74% of the total claims attended a CDRAC-supervised meeting of creditors in November 1999, and 94% of the creditors present voted for the debt restructuring program. In order to prevent a bankruptcy contest by a minority of creditors opposed to the restructuring plan, Thai Oil filed a petition of the rehabilitation procedures based on the revised bankruptcy law, thus moving into the court proceedings (Phu Chatkan [2000c]).

Sahaviriya OA PLC (SVOA), which had diversified business interests from sales of personal computers to information-related operations, was sued by major creditor Hongkong Shanghai Banking Corp. for net liabilities, and went into rehabilitation procedures under the Central Bankruptcy Court. Under the debt restructuring program for 7.78 billion baht approved at a creditors' meeting in December 1999, Sahaviriya OA agreed to transfer its 45% stake in a joint venture with Acer Company to the Taiwanese partner, thereby reducing its debts by about 250 million baht. A special purpose firm, fully capitalized by creditors, would purchase land and buildings owned by SVOA, with the proceeds used to repay part of the debts. SVOA agreed to reduce its registered capital from 300 million baht to 200 million baht in a gesture to make clear the responsibility of its shareholders. Later, creditors agreed to the debt-equity swaps and put up 1.8 billion baht in new capital, raising the equity stake owned by creditors to 90%. The remaining debts were canceled to make it easier for SVOA to continue in business; this brought the ratio of debts canceled to 67.71%. When the company's business improves again and dividend payments become possible, it plans to reduce capital again from 2000 million baht to 500 million baht to clear its cumulative losses. Since April 1998, SVOA shares have been trading on the liquidation post (REHABCO) of the Stock Exchange of Thailand. The company plans to apply for a return to normal trading upon the completion of the rehabilitation program (Phu Chatkan [2001b:82-83]).

### 5.3 Limitations on the Family Control of Business

The major petrochemical concern TPI continued to expand its petrochemical products business since first starting production of polyethylene in Southeast Asia in 1982. After the government shifted to a policy of liberalizing the industry in the 1990s, TPI moved into the upstream sector by building an olefin plant and also began oil refining. It completed the construction of a complex for integrated operations from procurement of raw materials to production by 1997. In that very year, the currency crisis broke out, and the company, which had relied on borrowings for most of its expansion investments, saw its balance of external debts rise to 160 billion baht, with foreign exchange losses amounting to 14.5 billion baht in the third quarter of 1997. It halted interest payments in August 1997, necessitating negotiations with 148 creditors on restructuring debts worth 3,478 million dollars. However, TPI founder and President Prachai Leophairatana refused to relinquish control over the family-owned business. This made the negotiations with creditors rough-going. Eventually, however, creditors took management rights away from him.

Prachai (an eldest son) started out as a rice export dealer, taking over the business inaugurated by his father (Porn), a second-generation Chinese businessman originally from Teocheow. Prachai established TPI in 1978, after his brother Pramuan (the third son), who studied petrochemicals at the Massa-

chusetts Institute of Technology, returned home and urged him and Prateep (the second son) to go into the petrochemical business. Pramuan explained to them the growing importance of the petrochemical industry in view of rising demand for plastics (Higashi [1996]). After TPI launched production, Siam Cement Group also entered into the petrochemical business. Amid intensifying rivalry between the two groups, TPI Group also entered the cement business, Siam Cement's home turf, by setting up TPI Polene PLC. In 1994, when a plan was announced to carry out a tariff cut program for the ASEAN Free Trade Area (AFTA),<sup>49</sup> TPI Group embarked on the construction of a petrochemical complex to bring down production costs through the vertical integration of operations. It believed that this head start would give its group a competitive edge over rivals (Thai Petrochemical Industry [1995]). TPI chose not to tie up with foreign firms for the project, but to single-handedly carry out the core operations by the Leophairatana family.<sup>50</sup> However, the group's hasty advances into many fields of the petrochemical business raised concern over the adequacy of its technologies.

TPI's debt restructuring talks, which had stalled after the currency crisis, were settled in February 1999. In December of the same year, however, the company unilaterally announced a capital increase program for one billion baht, enraging creditors again. Under the February agreement, creditors refused to cut debts and insisted that some debts be converted into equity shares, a measure that was certain to reduce the equity share of the Leophairatana family from 57%. President Prachai, for his part, grew confident of regaining control over the company after petrochemical products prices turned up in 1999, and feared that creditor banks would take it away from him. In the negotiations, TPI dragged its feet in the hope of obtaining concessions from creditors, such as a reduction in debts. The creditors, for their part, grew distrustful of Prachai after an investigation by accounting firm Price Waterhouse & Coopers found out that TPI had diverted some of the borrowings to an affiliate. There was no hope of building confidence between the two parties (Phu Chatkan [2000f]).

After International Finance Corporation (IFC), a member of the group of creditor banks, threatened to bring a bankruptcy suit unless TPI signed a debt restructuring accord by January 2000 the Thai government's BOI stepped in,

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<sup>49</sup> At the summit meeting in January 1992, the ASEAN countries agreed to lower tariff rates on manufactured products to 0% to 5% in stages by 2008, under the Common Effective Preferential Tariff (CEPT) scheme of the ASEAN Free Trade Area (AFTA) for the purpose of expanding regional trade. At the September 1994 meeting, ASEAN economic ministers decided to move up the program by five years to achieve the goal by 2003. The program was later advanced again by another year.

<sup>50</sup> Siam Cement Group is pushing a similar program to expand its petrochemical business through vertical integration. However, it has entered capital tie-ups and technical assistance accords with Dow Chemical of the United States, Mitsui Chemical of Japan and foreign firms.

and it seemed that rehabilitation procedures would at last begin before the Central Bankruptcy Court. However, TPI rejected the creditor banks' application for the rehabilitation procedure and insisted that it was not in a position of net liabilities. This made it necessary for the two parties to argue over TPI's insolvency, a legal requirement for the petition for the rehabilitation procedure.<sup>51</sup> In March, the Central Bankruptcy Court turned down TPI's objection and determined that it in fact was in excess debt. Effective Planners, with the recommendation of the creditor banks, was selected as the planner of the rehabilitation procedure over TPI Planner, with a majority of over two-thirds of the total claims.

Under the draft rehabilitation plan announced by Effective Planners in September 2000, the overdue interest of 756 million dollars would be converted into equity shares, with the creditors holding 75% of registered capital (Phu chatkan [2000g:56]). The creditors would be prohibited from selling the shares for four years, while the former shareholder (Prachai) would be entitled to buy them back at the original price plus 1.5 times the interest payments. The remainder of the debts would be rescheduled for four years. The plan also called for TPI to sell non-core businesses such as a power plants and a jetty as well as its 49% holdings in TPI Polene PLC in 2001. The proceeds worth 200 million dollars from these sales would be used to repay the debts. TPI opposed the draft plan, demanding an easing of the terms for the share buybacks and a postponement of the sale of the power plant. When these demands were rejected, it mobilized its employees to protest in front of the Central Bankruptcy Court building. Despite this resistance, the rehabilitation plan for TPI was approved at a creditors' meeting in November.<sup>52</sup>

The rehabilitation plan for TPI finally moved to the phase of implementation by Effective Planners. In June 2001, Mr. Thongchat, former PTT governor, assumed the post of TPI president, and the company swung back into the black in the third quarter of 2001 for the first time since the currency crisis. It is assumed that the company will now move on to restructure its businesses by seeking alliances while making use of its existing petrochemical complex.<sup>53</sup> The equity stake held by Mr. Prachai and his family declined to 16%,

<sup>51</sup> The definition of insolvency was not clear even under the revised bankruptcy law, making it necessary for the creditors to prove the net debt position of TPI. The Central Bankruptcy Court examined the case and sided with the creditors, recognizing TPI's excess debt by reassessing the value of assets on the basis of its cash flows. However, there are agreements that the definition should be stipulated in legal provisions, and not left to the interpretation of court judges.

<sup>52</sup> The Central Bankruptcy Court approved the rehabilitation plan on December 15, 2000, but Mr. Prachai appealed the decision. In an effort to disrupt the plan, he also sued Mr. Norman, chairman of Effective Planners, for a violation of the working permit for foreigners and also filed lawsuits against Bangkok Bank, the biggest creditor. Later, Mr. Sippanonda, former Minister of Industry, became chairman of Effective Planners.

<sup>53</sup> In November 2001, TPI decided to sell a non-core business, an electric power company, to Banpu PLC.

keeping them out of direct involvement in the company's management. Until the very end, the founding family refused to surrender the reins of control over the group's businesses. Their failure to face up to the realities of liberalization, and their indecisiveness about alliances with outside partners to restructure their operations, eventually led to the downfall of TPI.

## 6. CONCLUSION

This paper has explained the institutional reforms and legal framework improvements concerning financial and corporate restructurings that have been implemented by the Thai government following the currency crisis. It has also cited concrete examples of debt and business restructurings carried out by Thai corporate groups in response to the changing environment. In closing, this section examines how extensively the economic institutional reforms and corporate group reorganizations have contributed to Thailand's economic recovery and the strengthening of Thai companies' competitiveness. It also looks at the problems that remain to be addressed.

The application of good corporate governance to listed companies, the revision of the bankruptcy law to include rehabilitation procedures, and the revision of the Alien Business Operation Act, which were the major points at issue in the economic institutional reforms and legal framework improvements in the wake of the currency crisis, were actually being addressed by government agencies concerned even before the outbreak of the crisis. These preparations helped the actual post-crisis reform efforts to proceed relatively smoothly. However, the trend toward reform was accelerated by the advice and recommendations of the IMF and the World Bank. Without their prodding, many of the reforms would not have materialized as soon as they did.

The question now is whether the contents and direction of the economic institutional reforms as actually implemented were suitable to Thailand's economy and society. The IMF and the World Bank pushed Thailand to introduce systems based on the Anglo-American model, meaning corporate governance that maximizes the value to shareholders, emphasis on direct financing in fund procurement, and the protection of creditors' rights in revisions to the bankruptcy law. Given the trend of global liberalization, this direction in reform efforts may be unavoidable. But Thailand has its own corporate culture and business climate, which was nurtured in the course of its economic growth. While the trend of liberalization must be accepted as a fundamental principle, there may be a need for means of harmonizing it with what Thailand has developed on its own. The development of corporate management that pays due heed to stakeholders, including business partners and employees, and the introduction of a system for the proper screening of lending that takes borrowers' future prospects into account, certainly merit consideration.

Next, Thai companies are being differentiated into excellent companies and failed companies, with the dividing line being by how deeply they are committed to business restructuring and managerial reform in response to the ongoing institutional changes. Siam Cement Group and CP Group, for example, are concentrating their management resources on selected businesses and selling off non-core businesses to foreign companies; they are resolutely tackling organizational reforms with the utmost attention given to investors. Not a few companies that defaulted on their debts after the currency crisis are now on the track to corporate revival, taking advantage of the institutional reforms. If companies sell non-core operations and form business alliances with foreign firms, they can expect to get the chance to buy back their equity stakes by regaining operating profitability in the future. Conversely, as seen with the TPI Group, there are companies that refused to abandon their family-owned structures, and deprived themselves of the chance of corporate revival. In the end many of them failed to retain management rights.

Many Thai corporate groups have tried to restructure their businesses and introduce good corporate governance after the crisis, taking advantage of the institutional reforms. Thus, Thailand's institutional reforms did play the role of guiding companies to a course of action leading to corporate revival. However, it would be premature to make a judgment on the extent to which the reforms have contributed to the improvement of corporate profitability and the enhancement of competitiveness. Corporate bond issues resumed and institutional investors were allowed to take equity stakes in Thai companies. But there are still no signs of improving corporate business indicators. Under the present circumstances, where liberalization and information technology are advancing globally along with mergers and acquisitions among multinational enterprises, however, management reform that gives a much greater weight to shareholders, business strategic alliances with foreign firms to tap their advanced technologies, and mergers in pursuit of economies of scale are now considered as key components of unavoidable strategies.

While the restructuring of the corporate sector is making rapid headway along the road toward liberalization, the point that should be kept in mind from the viewpoint of strengthening corporate competitiveness is how to maintain comparative advantage to achieve export growth. At the levels of individual companies, there should be steady efforts at production sites to improve the quality of products and productivity, revamp the inspection system for both materials and products, and strengthen product development capabilities. In addition, the government and private sectors should cooperate in the areas of technology research and development, the certification system for products and their quality, and human resources development. Joint efforts are also needed in coping with industrial reorganization and anti-dumping problems. With regard to structural adjustment support from the supply side, with an emphasis on the recovery of these aspects of the real economy,

initiatives based on Japan's experience are already under way in Thailand, including industrial restructuring plans and development policies for small and medium enterprises.

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