

PROTECTION OF SMES IN BANKRUPTCY LAWS: A COMPARATIVE ANALYSIS OF LEGAL FRAMEWORKS AND PRACTICES IN CHINA AND THAILAND

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Abstract: This study conducts a comprehensive comparative analysis of the protection mechanisms for small and medium-sized enterprises (SMEs) in the bankruptcy laws of China and Thailand. SMEs are essential to both countries' economic landscapes, significantly contributing to GDP and employment. However, these enterprises are particularly vulnerable to financial distress, necessitating robust legal frameworks to facilitate their reorganization and survival during bankruptcy. The research examines statutory provisions, case law, and practical implementation to identify the strengths and weaknesses of each system. Findings reveal that while China and Thailand have developed comprehensive legal frameworks aimed at protecting SMEs, significant differences exist in their practical application and effectiveness. China's Enterprise Bankruptcy Law, influenced by civil law traditions, faces challenges related to bureaucratic inefficiencies and regional disparities. In contrast, Thailand's hybrid legal system benefits from recent reforms, though access to legal resources remains inconsistent. The study underscores the importance of continuous legal reforms and targeted policy interventions to enhance SME protection, offering valuable insights for policymakers, legal practitioners, and business owners.

Keywords: SME protection, Bankruptcy laws, Legal frameworks

Introduction

Small and medium-sized enterprises (SMEs) are pivotal to the economic landscape of both China and Thailand, playing a critical role in job creation, innovation, and overall economic growth. Despite their importance, SMEs often face significant vulnerabilities, particularly in times of financial distress. Bankruptcy laws are designed to provide a legal framework that not only facilitates the orderly exit of failing businesses but also offers mechanisms for the reorganization and survival of distressed firms. Understanding how these laws protect SMEs is crucial for enhancing their resilience and ensuring sustainable economic development.

In China, SMEs contribute significantly to the national economy, accounting for over 60% of the country's GDP and 80% of urban employment (National Bureau of Statistics of China, 2022). The

Chinese bankruptcy law, primarily governed by the Enterprise Bankruptcy Law of 2006, aims to balance the interests of creditors and debtors while promoting efficient reorganization procedures (Enterprise Bankruptcy Law of the People's Republic of China, 2006). This law has undergone several amendments to better address the complexities of modern economic activities and provide more robust protections for SMEs (Wang, 2020).

Thailand's economy similarly relies heavily on SMEs, which represent more than 99% of enterprises and employ over 70% of the workforce (Office of Small and Medium Enterprises Promotion [OSMEP], 2021). The Thai bankruptcy framework, underpinned by the Bankruptcy Act B.E. 2483 (1940) and its subsequent amendments, provides a legal foundation for addressing insolvency issues. Recent reforms have sought to streamline the bankruptcy process and enhance the support available to distressed SMEs, recognizing their crucial role in the economy (Chotithamaporn, 2019).

Comparing the bankruptcy laws of China and Thailand reveals significant insights into how different legal systems approach SME protection. Both countries have distinct legal traditions—China's legal system is influenced by the civil law tradition, particularly the Germanic-Roman law, while Thailand's system reflects a hybrid of civil and common law influences (Chen, 2010; Harding, 2001). These differences impact the design and implementation of bankruptcy laws, affecting how SMEs are protected during insolvency procedures.

This comparative analysis aims to explore the legal frameworks and practices in China and Thailand, focusing on the mechanisms designed to protect SMEs during bankruptcy. By examining the statutory provisions, case law, and practical implementation of these laws, this study seeks to identify the strengths and weaknesses of each system. The findings will provide valuable insights for policymakers, legal practitioners, and business owners, offering potential avenues for reform and improvement in both countries.

Literature Review

The literature on bankruptcy laws and SME protection in China and Thailand provides a comprehensive overview of the historical development, key legal principles, and comparative analyses. This section reviews relevant studies and legal texts to establish a foundation for the comparative analysis of SME protection mechanisms in the two countries.

China's bankruptcy law has evolved significantly since the economic reforms of the late 20th century. The enactment of the Enterprise Bankruptcy Law in 2006 marked a milestone, providing a unified legal framework for addressing insolvency issues across the country (Wang, 2020). This law introduced provisions for reorganization and liquidation, aiming to balance the interests of creditors and debtors and improve the efficiency of the bankruptcy process (Wang, 2020). The historical context of China's bankruptcy law is rooted in its transition from a centrally planned economy to a market-oriented

one, which necessitated legal reforms to support economic growth and stability (Chen, 2010).

In contrast, Thailand's bankruptcy law has a longer history, dating back to the Bankruptcy Act B.E. 2483 (1940). Over the years, the Thai bankruptcy framework has undergone several amendments to address the changing economic landscape and improve the effectiveness of bankruptcy procedures (Chotithamaporn, 2019). Recent reforms have focused on enhancing the protection of SMEs and streamlining the reorganization process to support business continuity and economic stability (Chotithamaporn, 2019).

The key principles underlying bankruptcy laws in China and Thailand reflect their respective legal traditions. In China, the bankruptcy law incorporates principles from both civil and common law traditions, influenced by the Germanic-Roman legal system (Chen, 2010). The Enterprise Bankruptcy Law emphasizes the importance of fair treatment of creditors, protection of debtor rights, and the promotion of economic efficiency through reorganization and liquidation processes (Wang, 2020). Specific provisions aimed at protecting SMEs include simplified procedures for small business bankruptcies and measures to facilitate debt restructuring and reorganization (Enterprise Bankruptcy Law of the People's Republic of China, 2006).

Thailand's bankruptcy law, influenced by both civil and common law traditions, incorporates principles of fairness, creditor protection, and economic efficiency (Harding, 2001). The Bankruptcy Act B.E. 2483 (1940) provides a legal framework for both liquidation and reorganization, with recent amendments focusing on improving the protection of SMEs and enhancing the efficiency of bankruptcy procedures (Chotithamaporn, 2019). Key provisions include special procedures for SME bankruptcies, mechanisms for debt restructuring, and protections against unfair treatment of small business owners (Bankruptcy Act B.E. 2483, 1940).

Several comparative studies have examined the differences and similarities in bankruptcy laws between China and other jurisdictions, highlighting the unique challenges and opportunities in each legal system. For instance, Ho (2020) compares the bankruptcy frameworks of China and the United States, emphasizing the distinct approaches to debtor protection and creditor rights. Similarly, Liew (2018) provides a comparative analysis of bankruptcy laws in China and Japan, focusing on the procedural efficiencies and protection mechanisms for SMEs.

Comparative studies between China and Thailand are relatively sparse, but existing research suggests that both countries face similar challenges in protecting SMEs during bankruptcy. For example, Xu and Wu (2022) highlight the importance of effective reorganization mechanisms and the need for legal reforms to enhance SME protection in both jurisdictions. Their study underscores the role of cultural and institutional factors in shaping the legal frameworks and suggests that a comparative approach can offer valuable insights for policymakers and legal practitioners.

Despite the extensive literature on bankruptcy laws and SME protection, there are gaps that

warrant further research. Notably, there is limited comparative analysis specifically focusing on the protection mechanisms for SMEs in China and Thailand. Existing studies tend to focus on broader comparisons or specific aspects of bankruptcy law, leaving a gap in the understanding of how these mechanisms function in practice and their effectiveness in protecting SMEs.

Methodology

This section outlines the research methodology employed to conduct a comparative analysis of SME protection mechanisms in the bankruptcy laws of China and Thailand. The methodology ensures a comprehensive, systematic, and rigorous examination of the relevant legal frameworks and practices in both countries. The key components of the methodology include data sources, the analytical framework, and the comparative metrics applied.

The research draws on both primary and secondary data sources to ensure comprehensive and accurate information on the bankruptcy laws and SME protection mechanisms in China and Thailand. Primary data sources include legal texts and statutes such as the Enterprise Bankruptcy Law of the People's Republic of China (2006) and the Bankruptcy Act B.E. 2483 (1940) of Thailand and its subsequent amendments. Additionally, relevant judicial decisions and case reports from Chinese and Thai courts that illustrate the application of bankruptcy laws to SMEs are examined. Government and regulatory documents, including reports and publications from the National Bureau of Statistics of China and the Office of Small and Medium Enterprises Promotion (OSMEP) in Thailand, are also utilized.

Secondary data sources encompass a wide range of academic journals and articles, including scholarly articles and comparative studies on bankruptcy law and SME protection, as well as legal commentaries and analyses published in reputable law journals. Comprehensive texts on Chinese and Thai legal systems, focusing on bankruptcy law and SME protection, are also reviewed. Reports from international organizations, such as the World Bank and the International Monetary Fund (IMF), provide additional insights into the efficacy of bankruptcy laws and SME protection in the two countries.

The analytical framework for this comparative study is structured around key legal and procedural aspects of bankruptcy protection for SMEs. The framework includes an examination of the statutory provisions and legal principles underpinning bankruptcy laws in China and Thailand, identifying specific legal measures designed to protect SMEs, such as simplified procedures, debt restructuring mechanisms, and reorganization processes. The analysis also considers how bankruptcy laws are applied in practice, focusing on the treatment of SMEs in bankruptcy proceedings and includes case studies illustrating the real-world application of bankruptcy protection mechanisms for SMEs in both countries.

Comparative metrics involve the comparison of key metrics such as the time required for bankruptcy resolution, recovery rates for SMEs, and the costs associated with bankruptcy procedures. This assessment evaluates the effectiveness of SME protection measures based on outcomes observed in judicial decisions and practical implementations.

The comparative analysis involves a systematic comparison of the bankruptcy laws and SME protection mechanisms in China and Thailand using the analytical framework described above. The analysis is conducted in three main stages. First, a statutory comparison is performed, detailing the statutory provisions in the Enterprise Bankruptcy Law of China and the Bankruptcy Act of Thailand, and identifying similarities and differences in the legal frameworks and specific measures aimed at protecting SMEs. Second, case law analysis examines selected case studies from both countries to understand how courts interpret and apply bankruptcy laws to SMEs, analyzing the outcomes of these cases to evaluate the effectiveness of the legal protections available to SMEs. Finally, practical implementation is reviewed through empirical data and reports on the practical implementation of bankruptcy laws in China and Thailand, evaluating the efficiency, accessibility, and impact of bankruptcy protection mechanisms on SMEs in both countries.

While this study aims to provide a comprehensive comparative analysis, it acknowledges certain limitations. These include limited availability of detailed case law and practical implementation data in some regions, particularly for recent reforms and their impacts on SMEs. Additionally, cultural and institutional differences influence the application and effectiveness of bankruptcy laws, which may not be fully captured in the comparative analysis. The focus on SME protection mechanisms may also exclude other relevant aspects of bankruptcy law that could influence the overall insolvency framework in both countries.

The methodology outlined above ensures a rigorous and comprehensive approach to comparing the bankruptcy laws and SME protection mechanisms in China and Thailand. By integrating primary and secondary data sources, applying a structured analytical framework, and conducting detailed comparative analysis, this study aims to provide valuable insights for policymakers, legal practitioners, and scholars interested in the field of bankruptcy law and SME protection.

Comparative Analysis

This section presents a detailed comparative analysis of the bankruptcy laws and SME protection mechanisms in China and Thailand. The analysis focuses on the statutory provisions, case law, and practical implementation of these laws, highlighting the similarities and differences in how SMEs are protected during bankruptcy proceedings in both countries.

The statutory provisions in the bankruptcy laws of China and Thailand reveal both commonalities and distinctions in their approaches to protecting SMEs.

China: The Enterprise Bankruptcy Law of the People's Republic of China (2006) provides a comprehensive framework for handling insolvency issues. It includes specific provisions aimed at protecting SMEs, such as simplified bankruptcy procedures for small businesses and mechanisms to facilitate debt restructuring and reorganization (Enterprise Bankruptcy Law of the People's Republic of China, 2006). These provisions are designed to expedite the bankruptcy process and reduce the administrative burden on SMEs, allowing them to recover and continue operations more efficiently (Wang, 2020).

Thailand: The Bankruptcy Act B.E. 2483 (1940) and its subsequent amendments provide the legal foundation for bankruptcy proceedings in Thailand. Similar to China, Thailand's bankruptcy law includes provisions to support SMEs, such as special procedures for SME bankruptcies and measures to facilitate debt restructuring (Chotithamaporn, 2019). Recent amendments to the Bankruptcy Act have introduced more streamlined processes for SME reorganization, reflecting the government's recognition of the critical role SMEs play in the economy (Bankruptcy Act B.E. 2483, 1940).

Both countries' laws emphasize the need for efficient reorganization processes and the protection of debtor rights, but they differ in their legal traditions and specific procedural details. China's approach is influenced by the civil law tradition, particularly the Germanic-Roman legal system, while Thailand's system reflects a hybrid of civil and common law influences (Chen, 2010; Harding, 2001).

Case law analysis provides insights into how the statutory provisions are applied in practice and the effectiveness of these laws in protecting SMEs.

China: Judicial decisions in China have demonstrated a commitment to applying the Enterprise Bankruptcy Law's provisions to protect SMEs. For instance, cases have shown that Chinese courts often expedite bankruptcy proceedings for SMEs to minimize disruption to their operations (Wang, 2020). The courts also actively facilitate debt restructuring processes, allowing SMEs to reorganize their debts and continue their business activities. However, the effectiveness of these protections can vary depending on the local implementation and the specific circumstances of each case (Chen, 2010).

Thailand: Thai courts have similarly shown a proactive approach in applying the Bankruptcy Act's provisions to protect SMEs. Recent case studies indicate that Thai courts prioritize the reorganization of SMEs over liquidation, reflecting a broader policy objective of sustaining SME operations and preserving employment (Chotithamaporn, 2019). The courts also play a crucial role in overseeing the fair treatment of SME creditors and ensuring that debt restructuring agreements are equitable and feasible (Harding, 2001).

Despite these positive trends, both countries face challenges in ensuring consistent and effective application of their bankruptcy laws. Issues such as regional disparities in judicial capacity and varying levels of legal expertise can impact the outcomes of bankruptcy proceedings for SMEs (Liew, 2018).

Practical Implementation

The practical implementation of bankruptcy laws and the protection mechanisms for SMEs involves examining empirical data and reports on the efficiency, accessibility, and impact of these laws.

China: The practical implementation of the Enterprise Bankruptcy Law in China has shown mixed results. While the law provides robust mechanisms for SME protection, its effectiveness is often hindered by bureaucratic inefficiencies and regional disparities in enforcement (Wang, 2020). For example, the time required for bankruptcy resolution can vary significantly between different regions, impacting the overall recovery rates for SMEs. Additionally, the costs associated with bankruptcy procedures can be burdensome for smaller enterprises, despite the simplified procedures in place (Xu & Wu, 2022).

Thailand: In Thailand, the implementation of the Bankruptcy Act has generally been more streamlined, particularly with recent reforms aimed at enhancing SME protection. Empirical data suggests that the time required for bankruptcy resolution and the recovery rates for SMEs are relatively favorable compared to China (Chotithamaporn, 2019). However, challenges remain in ensuring that all SMEs have equal access to bankruptcy protection mechanisms, particularly in rural areas where legal resources may be limited (Office of Small and Medium Enterprises Promotion [OSMEP], 2021).

Both countries have made significant strides in improving their bankruptcy frameworks to better support SMEs, but ongoing reforms and targeted policy interventions are needed to address the remaining gaps and enhance the overall effectiveness of these laws.

Results

The comparative analysis of the bankruptcy laws and SME protection mechanisms in China and Thailand has yielded several significant findings. These findings highlight the strengths and weaknesses of each country's legal framework and its practical application in protecting SMEs during bankruptcy proceedings.

China: The Enterprise Bankruptcy Law of China provides a comprehensive legal framework aimed at balancing the interests of creditors and debtors. It includes specific provisions designed to facilitate the reorganization and liquidation of SMEs, such as simplified procedures and mechanisms for debt restructuring. However, the effectiveness of these provisions is often undermined by bureaucratic inefficiencies and regional disparities in enforcement (Wang, 2020). The influence of the civil law tradition, particularly the Germanic-Roman legal system, is evident in the structure and principles of the Chinese bankruptcy law (Chen, 2010).

Thailand: Thailand's Bankruptcy Act B.E. 2483 (1940) has evolved to include provisions that specifically address the needs of SMEs. Recent amendments have introduced streamlined processes for SME bankruptcies and enhanced mechanisms for debt restructuring and reorganization

(Chotithamaporn, 2019). The hybrid legal system in Thailand, which combines elements of civil and common law traditions, has contributed to a more flexible and adaptive bankruptcy framework (Harding, 2001).

China: Judicial decisions in China reflect a strong commitment to protecting SMEs, with courts often prioritizing expedited bankruptcy proceedings and effective debt restructuring processes (Wang, 2020). However, the variability in judicial capacity and expertise across different regions can lead to inconsistent application of the law, affecting the overall protection afforded to SMEs (Chen, 2010). Case studies have shown that while some courts are proactive in facilitating SME reorganization, others may lack the resources or expertise to effectively implement these protections.

Thailand: Thai courts have demonstrated a proactive approach in applying the Bankruptcy Act's provisions to protect SMEs, with a clear preference for reorganization over liquidation (Chotithamaporn, 2019). The judiciary's role in overseeing fair treatment of SME creditors and ensuring equitable debt restructuring agreements is crucial in maintaining the effectiveness of bankruptcy protection mechanisms (Harding, 2001). Despite these positive trends, challenges remain in ensuring consistent application of the law, particularly in rural areas.

China: The practical implementation of bankruptcy laws in China is characterized by significant regional disparities. While major urban centers may benefit from more efficient judicial processes and greater access to legal resources, SMEs in rural areas often face prolonged bankruptcy proceedings and higher associated costs (Xu & Wu, 2022). The time required for bankruptcy resolution and the recovery rates for SMEs can vary widely, reflecting the uneven application of the law (Wang, 2020).

Thailand: Thailand has generally achieved more consistent implementation of its bankruptcy laws, particularly following recent reforms aimed at improving SME protection (Chotithamaporn, 2019). The time required for bankruptcy resolution and recovery rates for SMEs are relatively favorable compared to China. However, access to bankruptcy protection mechanisms remains a challenge for SMEs in remote areas, where legal resources and judicial capacity may be limited (OSMEP, 2021).

Strengths and Weaknesses

China:

Strengths: Comprehensive legal framework with specific provisions for SME protection; commitment to balancing creditor and debtor interests; robust reorganization mechanisms.

Weaknesses: Bureaucratic inefficiencies; regional disparities in enforcement and judicial capacity; high costs and prolonged proceedings for SMEs in rural areas.

Thailand:

Strengths: Streamlined bankruptcy processes; flexible and adaptive legal framework; proactive judicial approach to SME protection.

Weaknesses: Inconsistent access to legal resources in rural areas; ongoing need for reforms to

ensure equal protection across all regions.

Implications for Policy and Practice

The findings of this comparative analysis have several important implications for policymakers, legal practitioners, and business owners in both countries. In China, addressing bureaucratic inefficiencies and regional disparities in the application of bankruptcy laws could enhance the overall protection of SMEs. This could involve targeted reforms to streamline procedures and improve judicial capacity in less-developed regions. In Thailand, further efforts to ensure consistent access to bankruptcy protection mechanisms across all regions, particularly in rural areas, are necessary. Policymakers might consider additional reforms to strengthen the legal framework and enhance the judiciary's capacity to handle SME bankruptcies effectively.

Overall, both China and Thailand have made significant strides in developing legal frameworks that support SMEs during bankruptcy proceedings. However, continuous legal reforms and targeted policy interventions are essential to address remaining gaps and ensure that SMEs receive the protection they need to survive and thrive in times of financial distress.

Discussion

The comparative analysis of SME protection mechanisms in the bankruptcy laws of China and Thailand reveals several critical insights that can inform policy and practice in both countries. This discussion section delves into the implications of the findings, the strengths and weaknesses of each legal system, and potential areas for reform.

Implications for Policy and Practice

China: The Enterprise Bankruptcy Law provides a robust framework for addressing insolvency issues, but its practical effectiveness is often hindered by bureaucratic inefficiencies and regional disparities. Policymakers in China should prioritize reforms aimed at streamlining bankruptcy procedures and enhancing judicial capacity, particularly in less-developed regions. This could include implementing standardized training programs for judges and legal practitioners, increasing resource allocation to under-resourced courts, and adopting technology to improve the efficiency and transparency of bankruptcy proceedings (Wang, 2020).

Thailand: Thailand's legal framework is more adaptive, with recent reforms aimed at enhancing SME protection and streamlining bankruptcy processes. However, ensuring consistent access to bankruptcy protection mechanisms across all regions remains a challenge. Policymakers should focus on extending legal resources and judicial capacity to rural areas, potentially through mobile court systems or increased funding for local legal aid services (Chotithamaporn, 2019). Additionally, ongoing reforms should aim to simplify the reorganization process further and reduce the costs associated with bankruptcy proceedings for SMEs.

Strengths and Weaknesses

China:

Strengths: China's comprehensive legal framework includes specific provisions for SME protection, such as simplified bankruptcy procedures and robust reorganization mechanisms. The legal system's emphasis on balancing creditor and debtor interests promotes fair treatment in bankruptcy proceedings.

Weaknesses: The effectiveness of China's bankruptcy law is often compromised by bureaucratic inefficiencies and regional disparities. High costs and prolonged proceedings are significant barriers for SMEs, particularly in rural areas (Xu & Wu, 2022).

Thailand:

Strengths: Thailand's hybrid legal system and recent reforms have created a more streamlined and adaptive bankruptcy framework. The proactive judicial approach and simplified processes for SME bankruptcies contribute to more favorable outcomes for SMEs.

Weaknesses: Access to legal resources and consistent application of bankruptcy laws remain challenges, particularly in rural areas. Further reforms are needed to ensure that SMEs across all regions receive adequate protection during bankruptcy proceedings (OSMEP, 2021).

Areas for Further Research

Future research should explore the long-term impacts of recent legal reforms in both countries on SME survival and growth. Comparative studies involving additional jurisdictions with similar economic and legal contexts could provide broader insights into effective bankruptcy protection mechanisms for SMEs. Furthermore, empirical studies examining the experiences of SMEs in bankruptcy proceedings could highlight practical challenges and inform more targeted policy interventions.

Conclusions

This study provides a comprehensive comparative analysis of SME protection mechanisms in the bankruptcy laws of China and Thailand, highlighting both the strengths and weaknesses of each legal system. While both countries have developed robust legal frameworks aimed at protecting SMEs during bankruptcy proceedings, significant differences exist in their practical implementation and effectiveness.

In China, the Enterprise Bankruptcy Law offers comprehensive provisions for SME protection, but its effectiveness is often limited by bureaucratic inefficiencies and regional disparities. Policymakers should focus on streamlining procedures and enhancing judicial capacity to improve the practical application of bankruptcy laws.

Thailand's bankruptcy framework benefits from recent reforms that have introduced more

streamlined processes and enhanced SME protection. However, ensuring consistent access to legal resources and the uniform application of laws across all regions remains a challenge. Further reforms should aim to extend legal resources to rural areas and simplify the reorganization process for SMEs.

Overall, the findings of this study underscore the importance of continuous legal reforms and targeted policy interventions to enhance the protection of SMEs during bankruptcy proceedings. By addressing the identified weaknesses and building on the strengths of their respective legal systems, China and Thailand can improve the resilience and sustainability of their SME sectors.

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