

Regional Guide to Bankruptcy Law



Tilleke & Gibbins

JURISDICTION: CAMBODIA

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With thanks to international intern Cassandra Allen

The Bankruptcy System in Cambodia

The bankruptcy system in Cambodia is governed by the 2007 Insolvency Law, which applies to all businesses (including natural persons operating sole proprietorships).

If the business is a bank or financial institution, an insurance company, or a listed company, then insolvency proceedings cannot be opened under the Insolvency Law and will instead be subject to industry-specific requirements.

In Cambodia, out-of-court workouts are not well supported by the Insolvency Law or other practices; therefore, most insolvency proceedings are in-court.

Liquidation – Absolute Receivership

Who can initiate a bankruptcy action and how

The director(s), partners, or manager(s) of a business are legally obligated to file an insolvency petition when a business cannot meet a valid obligation in excess of KHR 5 million (USD 1,215). Creditors, public prosecutors, or the minister of commerce may also file insolvency proceedings if a debtor fails to do so. The insolvency petition must be made in writing and contain basic information on the debtor and petitioner, the grounds on which the petition is based, and known creditors. The petition must also have evidence that the debtor failed to pay obligations in excess of KHR 5 million (USD 1,215). The law does not take into account contingent liabilities or balance sheet insolvency when determining whether a business is insolvent.

Definition/criteria for insolvency

“Insolvency” refers to the situation where a debtor has ceased meeting its mature and valid obligations to pay, and is pronounced insolvent by the court.

Insolvency proceedings may only be opened by or against a debtor that is either a partnership or legal entity formed under the laws of Cambodia, or a foreign entity that owns assets in Cambodia and has a registered address in Cambodia. Assets may be tangible or intangible, provided the ownership is entered in a public register under the authority of the government of Cambodia.

A business must file a petition to open insolvency proceedings within 30 days from the date on which it fails to meet a mature and valid obligation of more than KHR 5 million (USD 1,215). If one of the individuals legally obligated to file an insolvency petition fails to do so within the 30-day window, the creditor(s) may be able to claim additional damages.

Insolvency proceedings cannot be opened if the debtor’s assets are not sufficient to cover the costs of the proceedings (unless a related individual is willing to advance money to cover those costs). In this

situation, an out-of-court workout may be attempted, although there is no statutory guidance for the workout.

Compositions

After the petition is filed, a hearing will be held to determine whether insolvency proceedings will be opened. The court will appoint an independent administrator to be in charge of managing (including receiving and selling) the debtor's assets, issuing injunctions to freeze assets, and seeking a stay of action by creditors against the debtor.

Once the court opens insolvency proceedings, no other actions can be brought or continued against the debtor or its estate. This stay of action remains in place until the end of the proceedings.

How to submit claims for debt repayment

The administrator will publish, in at least two major Cambodian newspapers, a notice that insolvency proceedings have been opened against the debtor. The notice will contain the deadline for the submission of written claims; the address to which the claims should be sent; and the date, time and place for the first creditors' meeting. A creditor must submit proof of its claims to the administrator in writing, including the nature and amount of the debts, by the notice deadline. The administrator will then prepare a claims list for the court before the first creditors' meeting.

Creditors will then attend a creditors' meetings where the administrator reports on the debtor's business situation, the implementation of a plan of compromise (if any), and the satisfaction of the creditors' claims.

Creditors' claims will be satisfied according to the ranking set out in Article 57 of the Insolvency Law. Employee wages, administrator's fees, and court fees will be prioritized, followed by secured claims, and then followed by state taxes. Shareholder loans are not admissible as claims in insolvency proceedings.

Other considerations

It should be noted that that there have been few insolvency proceedings in Cambodia as of 2020. The bankruptcy system is therefore still under development, notwithstanding the enactment of the Insolvency Law in 2007, and uncertainties will be commonplace in the absence of standard practices.

Business Reorganization

Who can initiate a business reorganization action and how

When an insolvency proceeding begins, a business may choose to coordinate a plan of compromise with its creditors. The compromise functions as a reorganization plan and, if approved by the court, terminates the insolvency proceedings.

Any plan of compromise must state the implementation period, provide for the full payment of the costs of the insolvency proceedings, treat all creditors in a given class equally, and satisfy dissenting creditors' claims. Plans of compromise must also provide that no payments related to income, dividends, or equity be made to any shareholder or partner until the entitlements under the plan have been fulfilled.

How the reorganization process unfolds

The plan of compromise must be approved by creditors (by vote in the creditors' meeting) and the court, or else the insolvency proceedings will be treated as a liquidation.

During the implementation of the plan, the debtor must include a statement on every business document that it issues noting that a plan of compromise is being implemented. The court may also appoint an administrator to supervise the implementation of the plan. Once a plan is approved, assets may be sold to begin fulfilling obligations.

How to submit claims for debt repayment

Because a plan of compromise follows the same procedure as the beginning of insolvency proceedings, the structure for claiming debt repayment is the same as for insolvency proceedings, listed above.

Discharge/exit from reorganization

The business exits reorganization when all commitments in the plan of compromise are met.

JURISDICTION: LAOS

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The Bankruptcy System in Laos

The bankruptcy system in Laos underwent a renewal in 2020. On May 25, 2020, the Official Gazette of the Ministry of Justice published the Law on Enterprise Rehabilitation and Bankruptcy No. 75/NA (the Law on Bankruptcy), dated December 26, 2019, and effective from June 9, 2020. The law was enacted to replace a similarly named law from 1944, which was deemed to be ineffective as Laos had yet to report a bankruptcy case. The Law on Bankruptcy redefines the local bankruptcy system and designates the authority in charge—the commercial chamber of the Lao People's Court—thereby bringing a promising future to structuring the country's nascent insolvency process.

The Law on Bankruptcy includes provisions that address entities of all size, but the following analysis will not discuss the provisions that are specifically dedicated to small and micro-enterprises. Also, as there is no precedent or previous bankruptcy action Laos to use for reference, practical insights into how strictly the process is applied are extremely limited.

Liquidation – Absolute Receivership

Under the Law on Bankruptcy, the bankruptcy process follows a clear progression.

First, when an applicant/creditor files for bankruptcy with the Lao People's Court, the court must notify and provide a copy of the supporting documents to the indebted enterprise within five working days. The indebted enterprise (i.e., the debtor) is permitted to respond to the court's notification (e.g., by contesting the amount of debts). The debtor can also request a rehabilitation procedure at this point (see further below).

Second, a clerk of the Lao People's Court will transfer the supporting documents to a judge. After a hearing and consultation with the creditors, the judge will issue an order to begin the enterprise's bankruptcy process. The order will prohibit the involved creditors from pursuing any legal action against the debtor and will be publicized by the media to alert other interested creditors to the ongoing bankruptcy process, providing other creditors with the opportunity to claim their debt. Subsequently, the judge will call for a meeting of the creditors. The participating creditors will have the chance to approve the plans for effective business recovery, management of liquidity, or mergers and acquisitions.

Third, the Lao People's Court will appoint an asset controller to scrutinize the enterprise's finances and assets, potential for bankruptcy, and liquidity, and report its findings to the court and the creditors. During the bankruptcy process, the asset controller will also handle claims for repayment.

Who can initiate a bankruptcy action and how

For enterprises that are bankrupt or near bankruptcy, partners and shareholders representing at least 20% of the total voting rights can opt to initiate a bankruptcy action in the event that the enterprise has not filed for bankruptcy or rehabilitation. Similarly, a group including at least 20% of the enterprise's cooperative members can take such an action if the cooperative is facing challenging financial problems and cannot pay its debts. For these parties to initiate a bankruptcy action, they will need to submit an official claim to the commercial chamber of the Lao People's Court along with various supporting documentation, such as the minutes of the meeting in which it was resolved to initiate the action (or the partners' or shareholders' resolution), basic information and contact details of the debtor, a report on the enterprise's assets, and information on the creditors and the specific debts owed.

Creditors and employees (or trade unions) also have the right to file for bankruptcy against a debtor (Law on Bankruptcy, article 10). Creditors must be seeking payment for an unpaid debt of at least LAK 10 million (approx. USD 1,100) and have sent at least three notices demanding repayment that were acknowledged by the debtor (with at least 20 days between each letter). Employees or trade unions can initiate an action if the enterprise does not pay salary or compensation for three consecutive months. In this case, the documents to be submitted to the Lao People's Court include the official claim and supporting documentation such as evidence of the debt and demand letters or relevant agreements and contracts.

Definition/criteria for insolvency

The Law on Bankruptcy does not define "insolvency," but defines bankrupt enterprises as enterprises that are facing financial difficulties and are unable to resolve their debts by the date they become due.

Compositions

Once in possession of the dossier, the judge will consider whether to issue an order to open bankruptcy proceedings, upon which all legal actions against the debtor will be stopped; parties wishing to continue any outstanding legal actions should present them again under the newly opened bankruptcy proceedings.

How to submit claims for debt repayment

Prior to the proceedings, demand letters may be sent to the debtor, and mediation supervised by an authority (village chief, Economic Dispute Resolution Center, etc.) is an option. After proceedings have started, the court order to initiate the bankruptcy process will be publicized by the media to share the

ongoing bankruptcy process with other interested creditors, plaintiffs (if any), the enterprise in question, the asset controller, the departments of the Ministry of Industry and Commerce that were involved in the registration of the enterprise, tax departments, trade unions, and other relevant sectors. All claims must be directed to the asset controller.

Business Rehabilitation

The rehabilitation process in the Law on Bankruptcy is intended to rescue enterprises in dire financial straits that cannot handle their debts. Accordingly, such an enterprise can request a rehabilitation process to be put in place whereby the enterprise can pursue its activities according to an agreement between the enterprise and the rehabilitation officers. During rehabilitation, legal actions brought against the debtor by creditors and other parties will be stopped, and will have to be approved by a judge to be pursued, except for criminal offenses, or claims related to the environment, safety, and social welfare.

Who can initiate a business rehabilitation action and how

Parties that can initiate business rehabilitation actions include the following:

- ◆ Enterprises that are bankrupt, or near bankruptcy;
- ◆ Partners and shareholders of enterprises that are bankrupt or near bankruptcy, and represent at least 20% of the total voting rights, in the event that the enterprise has not filed for bankruptcy or rehabilitation procedure;
- ◆ A group including at least 20% of the enterprise's cooperative members, if the cooperative is facing challenging financial problems and cannot pay its debts.

How the rehabilitation process unfolds

To initiate the rehabilitation procedure, the rehabilitation plan must be approved by the Lao People's Court and by creditors covering two-thirds of the total debt. The enterprise, the asset controller, or a court-appointed individual may be authorized to administer the enterprise during the rehabilitation procedure. Once the rehabilitation procedure is initiated, operations that may impact the enterprise's capacity for debt repayment or depreciation must be approved by the asset controller and be reported to the court.

How to submit claims for debt repayment

All claims must be directed to the asset controller.

Discharge/exit from rehabilitation

An enterprise may leave the rehabilitation procedure by implementing a rehabilitation plan, achieving sufficient financial stability to pursue its business activities, and repaying debts, provided it is not facing any opposition from creditors. The Lao People's Court will pronounce the end of the rehabilitation procedure.

If continued financial difficulties make an enterprise unable to implement the rehabilitation plan and guarantee operational continuity, the Lao People's Court will declare the enterprise bankrupt. Conversely, at the request of the creditors or the asset controller, the court can amend and reintroduce the plan.

JURISDICTION: MYANMAR

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The Bankruptcy System in Myanmar

The Myanmar Insolvency Law 2020 (MIL) was passed on February 14, 2020, to replace the Yangon Insolvency Act 1909 and the Myanmar Insolvency Act 1920. The passage of this new law was soon followed by the Insolvency Rules issued by the Union Supreme Court on April 28, 2020.

The MIL covers corporate rescue and rehabilitation plans, micro, small, and medium-scale enterprise (MSME) insolvency, winding up, personal insolvency, and cross-border insolvency. Bankruptcy proceedings are presented to the court by a creditor (or by multiple creditors filing jointly), while rehabilitation proceedings are conducted by an insolvency practitioner registered under the MIL.

Liquidation – Absolute Receivership

Who can initiate a bankruptcy action and how

A petition for a bankruptcy order to be made against a natural person may be presented by one of the person's creditors or jointly by more than one of them; or by the person himself or herself (MIL, sections 245–246). In considering whether to accept the petition, the court will look at whether the debtor is domiciled in Myanmar, is in Myanmar on the day the petition is presented, has been a resident of Myanmar in the past three years, or has done business in Myanmar in the last three years.

Definition/criteria for insolvency

According to Section 2(e) of the MIL, “bankrupt” means a person against whom a bankruptcy order has been made (under Part VIII); this expression also includes a debtor who cannot repay his or her debts. According to Section 2(x), “insolvent” means unable to pay debts as and when they become payable.

For a creditor's insolvency petition to be accepted by the court, the following criteria must be met (MIL, Section 248):

- ◆ The amount of debt (or aggregate of debts) is at least MMK 1,000,000 (USD 730);
- ◆ The debt is for a liquidated sum payable to a petitioning creditor either immediately or at a certain point in the future;
- ◆ The debt must be unsecured, unless the provisions of “creditor with security” apply;
- ◆ The debtor is unable to pay the debt or appears to have no reasonable prospect of being able to pay; and
- ◆ There is no outstanding application to set aside a bankruptcy notice served by other creditors regarding the debt.

To start the personal bankruptcy process, a creditor may proceed with one of two options:

1. Serving a debtor with a bankruptcy notice using Form 13 (provided under the Insolvency Rules) to request that the debtor pay, secure, or compound a debt to the satisfaction of the creditor within 21 days (MIL, Section 250). If the debtor fails to comply with the bankruptcy notice, Section 253(3) of the MIL allows the creditor to proceed with filing a petition in court accompanied by the proof of bankruptcy notice and a statement that the debtor failed to comply with it.
2. Petitioning the court directly by presenting Form 14 (provided under the Insolvency Rules) and paying the necessary court fees (MIL, Section 253). The petition must also state that the debtor is indebted to the applicant for at least MMK 1,000,000.

The court will grant a bankruptcy order if it finds that the debt in question has not been paid, secured, or compounded despite coming due, or that the debtor has no reasonable prospect of being able to pay when the debt falls due.

As for corporate insolvency, a company is presumed insolvent if:

- ◆ A creditor owed at least MMK 1,000,000 (USD 730) has served the company a written demand using Form 9 (provided under the Insolvency Rules) and left it at the company's registered office, within 21 days of which the company has not paid, secured, or compounded the debt to the reasonable satisfaction of the creditor; or
- ◆ A creditor submits to the court that a court execution or other process issued in favor of the creditor has not been satisfied in whole or in part.

After this presumption of insolvency has been made, an application to the court for the winding up of a company based on insolvency can be presented by a company director or by a creditor. The court will then decide to appoint a liquidator and proceed with considering the company's outstanding debts.

Compositions

In accordance with Division 6 of Part VIII of the MIL, a bankrupt may provide the trustee with a written and signed proposal for a composition. This proposal should set out the terms of the proposed composition or arrangement and the particulars of any guarantors or securities forming part of the proposal. After determining that the proposal is sufficiently detailed, the trustee must prepare a report stating his or her view on whether the proposed composition or arrangement would be beneficial for the bankrupt person and the creditors, and whether the proposal is likely to be approved at a creditors' meeting. The trustee must file the proposal, the report, and an application for an order to call a creditors' meeting with the court in accordance with the requirements of the MIL (Part VIII, Division 6) and the Insolvency Rules.

After receiving an order and directions from the court, the trustee needs to convene a creditors' meeting. The results of the meeting must be submitted to the court along with an application for orders and directions regarding the proposed composition or arrangement. If the creditors' meeting rejects the proposal, the court must dismiss the application. If, on the other hand, the proposal is approved by the creditors, the court may consider whether to approve the composition or arrangement and give further orders or directions accordingly.

How to submit claims for debt repayment

To submit a claim for debt repayment, a creditor may serve a debtor with a bankruptcy notice (MIL, Section 250) or proceed directly with a court petition (MIL, Section 253).

Other considerations

The MIL also introduces a separate rescue and insolvency regime for MSMEs, which aims to provide a simpler and more cost-effective rehabilitation and liquidation process tailored to their unique needs.

Corporate Rescue and Rehabilitation

Rehabilitation proceedings (MIL, Section 40) are a dual-phase process consisting of the company rescue stage and the company plan stage.

The rescue stage commences when a rehabilitation manager is appointed, and it ends upon the commencement of either the plan stage or the company's liquidation. The plan stage in turn commences upon the signing of a rehabilitation plan and concludes upon filing a notice with the registrar, receiving a court order to terminate the rehabilitation plan, or the creditors deciding to transition to a winding up of the company.

How the rehabilitation process unfolds

First, a rehabilitation manager must be appointed by the company, a secured creditor, or the court. This begins the rescue stage, during which no steps may be taken to enforce security over the property without consent from the court or the rehabilitation manager. The principal functions of the rehabilitation manager are to manage the affairs of the company while investigating options for achieving the rehabilitation objectives. After appointment, the rehabilitation manager will apply to the court for a rehabilitation order, and a statement of the company's affairs must also be submitted.

A proposed rehabilitation plan must be submitted to a creditors' meeting for approval by the requisite majority of the creditors. This plan constitutes a compromise between the company and its creditors and shareholders.

How to submit claims for debt repayment

To submit a claim for debt repayment, a creditor may serve a statutory demand using Form 9 (provided under the Insolvency Rules) for payment of debt by a company (MIL, Section 162). If a company is already insolvent or declared bankrupt, a creditor will have to submit a proposal to the liquidator appointed by the court to request debt repayment.

Discharge/exit from reorganization

The rehabilitation plan may be terminated by the objectives being achieved, by agreement between the creditors if the objectives are deemed not to have been achieved, or by the court (for example, if the plan is failing or there is abuse of the process).

JURISDICTION: THAILAND

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The Bankruptcy System in Thailand

Bankruptcy and restructuring processes for both individuals and juristic persons in Thailand are governed by the Bankruptcy Act B.E. 2483 (1940) and its amendments; the Act Establishing Bankruptcy Courts and Bankruptcy Case Procedures B.E. 2542 (1999); the Rules on Bankruptcy Cases; and the Civil Procedure Code.

The Bankruptcy Courts currently consist of the Central Bankruptcy Court (in Bangkok) and the Bankruptcy Division of the Supreme Court. Regional bankruptcy courts are also provided for in the relevant legislation, but these have never been formed. Therefore, the Central Bankruptcy Court is the court of first instance for all cases nationwide, with proceedings continuing without adjournment under normal circumstances. Appeals may be made within one month from issuance of a judgment or order, and all accepted appeals are passed to the Bankruptcy Division of the Supreme Court.

Liquidation – Absolute Receivership

Who can initiate a bankruptcy action and how

Any creditor owed more than THB 2 million (USD 63,000) by a corporate debtor or more than THB 1 million (USD 31,500) by an individual debtor may initiate a bankruptcy action against the debtor. (Similarly, the debtor must be indebted to one or more plaintiffs totaling at least THB 1 million (USD 31,500) if the debtor is a natural person, or at least THB 2 million (USD 63,000) if a juristic person.) The debtor must be proven insolvent, and the debt must be determined in a definite amount irrespective of whether it becomes due for payment immediately or at a future date. A liquidator of a corporate debtor may also initiate a bankruptcy petition.

Definition/criteria for insolvency

The Supreme Court has established that persons are insolvent when their assets are less than their debts. Section 8 of the Bankruptcy Act also states that debtors may be presumed insolvent when:

- ◆ They transfer assets or rights to manage their assets to another person for the benefit of the creditors;
- ◆ They transfer their assets dishonestly or fraudulently;
- ◆ They transfer an asset or create any right over it that may be deemed a preferential transfer if the debtor were declared bankrupt;
- ◆ They avoid paying creditors by leaving or remaining outside Thailand, removing their assets from the jurisdiction of the court, or neglecting to pay money according to a judgment to which they have consented;
- ◆ Their assets have been attached under a writ of execution, or there are no more assets for which attachment is possible;
- ◆ They declare to the court, in any action, that they cannot pay their debts;

- ◆ They inform a creditor that they cannot pay their debts;
- ◆ They submit proposals for compromising on their debts to two or more creditors; or
- ◆ They leave a debt unpaid after receiving demand letters from a creditor at least twice, at intervals of no less than 30 days.

Compositions

Composition can take place before or after a bankruptcy. In the former case, a debtor may make a written proposal for debt settlement by partial repayment or other means; the proposal must be made within seven days of submitting the explanation of bankruptcy-related matters, or within a time period prescribed by the receiver. If the proposal is accepted by a meeting of the creditors, the composition will then be subject to the court's approval, which makes the proposal legally binding on all creditors if granted. After the court's adjudication of bankruptcy, the debtor may also apply for a composition. If the court approves the composition, it can lead to the termination of bankruptcy and restoration of the debtor's power to manage its business.

How to submit claims for debt repayment

Creditors must apply for debt repayment with the official receiver within two months of the receiver's appointment by court order. However, if the creditor resides outside of Thailand, the receiver may extend this period by up to another two months. Otherwise, they will not be entitled to receive their share of the bankruptcy proceeds. The official receiver will submit all creditors' applications for debt repayment along with his or her opinion to the court, which will decide whether the creditors will be granted repayment of the debt. Creditors who object to the court's order may file an appeal with the Bankruptcy Division of the Supreme Court.

An agreement for debt repayment is binding only on the creditors who give consent.

Discharge from bankruptcy

The debtor, the official receiver, or an interested party may apply to the court for discharge from bankruptcy. The discharge will be granted if at least 50% of the assets have been distributed for repayment to creditors and the bankrupt is not deemed a dishonest person.

Business Reorganization

Who can initiate a business reorganization action and how

Debtors deemed honest in submitting the petition, single creditors or groups of creditors owed at least THB 10 million (USD 315,000), and government agencies (such as the Bank of Thailand) can submit a reorganization petition to the Bankruptcy Court in order to initiate a business reorganization process. If a debtor submits the petition, there must be sufficient grounds to believe that the debtor's business can be successfully reorganized, and the debtor must be insolvent and indebted to one or more creditors for at least THB 10 million (USD 315,000), regardless of whether the debt is due or not.

Under the latest amendment to the Bankruptcy Act in 2016, a debtor categorized as an SME may also initiate the reorganization. This includes both juristic and natural persons, including unregistered partnerships that operate an SME and are duly registered with the Office of Small and Medium Enterprises Promotion or other government agencies in accordance with the SMEs Promotion Act B.E.

2543 (2000). The debtor must be either an ordinary person or a body of persons who has a definite debt of not less than THB 2 million; a non-registered ordinary partnership, an ordinary juristic partnership, a limited partnership, or other juristic person as prescribed in ministerial regulations who has a definite debt of at least THB 3 million; or a limited company that has a definite debt of at least THB 3 million but less than THB 10 million, whether the debt is due or not.

How the reorganization process unfolds

Once the Bankruptcy Court accepts a reorganization petition, all of the debtor's outstanding debts are placed under an automatic stay that shields the debtor from creditors' debt-collection efforts and prevents the commencement or continuation of any legal process against the debtor. The stay also prevents creditors from filing dissolution or bankruptcy petitions. However, the debtor is also prohibited from disposing of, distributing, transferring, or engaging in certain other activities that encumber its property during an automatic stay, except when necessary for conducting its ordinary business or as otherwise provided by court order.

After reviewing the evidence and hearing the witnesses, the Bankruptcy Court will either allow the reorganization or dismiss the case. The petitioner can appeal the decision to the Supreme Court.

How to submit claims for debt repayment

Creditors must submit an application for debt repayment, along with a copy to the official receiver, within one month of the appointment of the planner being published. Creditors can submit debt repayment applications to the official receiver if the following conditions are met:

- ◆ The debt obligation (regardless of whether it has matured or is conditional) occurred before the court issued an order to reorganize the business;
- ◆ The obligation has not arisen in violation of legal prohibitions or good morals; and
- ◆ The obligation is legally enforceable.

The creditor will have voting rights in the full amount of the obligation as stated in the debt repayment application if the other creditors, the debtor, and the planner do not object. In addition, the official receiver can authorize repayment of the debt unless there are suitable grounds for ordering otherwise. Any "concerned person" associated with the debt repayment application can file an objection to the court within 14 days from the date of receipt of the official receiver's order.

Discharge/exit from reorganization

If the reorganization has been completed, the debtor's manager, the plan administrator, the interim administrator, or the official receiver may request termination of the order for reorganization, and the court will decide whether to terminate or extend the organization period.

JURISDICTION: VIETNAM

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The Bankruptcy System in Vietnam

Vietnam's current Bankruptcy Law (Law No. 51/2014/QH13 on Bankruptcy dated June 19, 2014) took effect on January 1, 2015. The law focuses on bankruptcy proceedings and the responsibilities of related parties; procedures for recovery of business operations; and measures for preservation of company assets. It does not, however, provide further details on how to implement financial restructurings, reorganizations, or liquidations, which could be conducted by a company subject to bankruptcy proceedings.

Although the Bankruptcy Law has been effective for more than five years, the government has issued only limited guidance on its implementation. Due to the growth of bankruptcy cases in Vietnam, it is likely that more guiding legislation will be issued in the near future.

Liquidation – Absolute Receivership

Definition/criteria for insolvency

Under the Bankruptcy Law, a company is deemed insolvent if it has failed to pay its due debts within three months from the due date. The Judges' Council of the Supreme Court has clarified that the debt must be unsecured or partially secured, expressly recognized by the relevant parties, supported by adequate evidence, and free of dispute.

Who can initiate a bankruptcy action and how

Unsecured or partially secured creditors may initiate bankruptcy proceedings when a debt remains unpaid three months after its due date, as may employees or trade union representatives when wages or other debts have gone unpaid for three months. For joint-stock companies, when the company becomes insolvent, shareholders or groups of shareholders owning at least 20% of the ordinary shares for at least six consecutive months can initiate proceedings.

Additionally, the legal representative, owner, and head of a company are obligated to file a bankruptcy petition when the company becomes insolvent.

Bankruptcy Proceedings

After a bankruptcy petition is legally filed with the court, the company and its creditors normally go through a complex process of six main steps before the company assets are distributed:

1. Negotiation on possible withdrawal of petition

Within 20 days from the date on which the bankruptcy petition is legally filed to the court, the company and its creditors may negotiate to withdraw the bankruptcy petition. If negotiation does not take place, or is unsuccessful, a decision on commencement of bankruptcy

proceedings will be issued by the court within 30 days from the date of acceptance of the bankruptcy petition. The decision will then be sent to the petitioner.

2. Appointment of receiver

Within three days from the commencement of bankruptcy proceedings, the court will appoint a receiver to be responsible for liquidating the company's assets and conducting necessary steps during the proceedings. The receiver will prepare and post publicly the lists of creditors with details of the debts, which must be completed within 45 days from the date of the creditors sending their requests for debt repayment to the company.

Within 30 days from the date of receiving the court's decision, the company must provide a list of the company's assets with valuation.

3. Creditors' meeting

Within 20 days from the date of completion of the list of creditors or the list of the company's assets, whichever is later, a creditors' meeting will be held in accordance with the court's instruction and always subject to a condition of a quorum of creditors representing at least 51% of the unsecured debts.

In this meeting, the company and its creditors will discuss the company's situation and may approve a recovery plan if creditors who hold at least 65% of the unsecured debts have approved the plan. If the creditors do not agree on the recovery plan, the court will issue a decision to start the process of liquidating the company's assets.

4. Approval of the recovery plan

If a recovery plan is approved at the creditors' meeting, it should be prepared in detail and sent to the court, the creditors, and the receiver for their consideration.

Following the approval of the recovery plan by the creditors in the second creditors' meeting, the court will issue a decision officially recognizing the company's recovery plan, which lasts a maximum of three years from the date of the resolution of the creditors' meeting to approve the business recovery plan.

5. Declaration of bankruptcy

A company will be declared bankrupt by the court if:

- ◆ A creditors' meeting is not successfully convened, or fails to approve any resolution;
- ◆ The creditors' meeting approves a resolution requesting that the insolvent company be declared bankrupt;
- ◆ The creditors' meeting approves a resolution on resuming operations or suspending the bankruptcy process, but no recovery plan is duly proposed or approved, or the company fails to implement the recovery plan;
- ◆ An insolvent company petitions for bankruptcy proceedings but has no money or other assets to pay the bankruptcy request fee or an advance on the bankruptcy charges; or
- ◆ After the acceptance of the bankruptcy petition, the company is unable to pay the bankruptcy charges.

6. Liquidation of the company's assets

Within five days from the date the court sends its decision to declare the company bankrupt to the civil judgment enforcement agency, the civil judgment enforcement agency becomes responsible for opening a bank account under its name and asking the receiver to start the process of liquidating the company's assets.

How to submit claims for debt repayment

All of the company's creditors should submit their claims to the receiver within 30 days from the date of the court decision on commencement of bankruptcy proceedings (unless *force majeure* events intervene). Such claims must provide evidence of the debts, including the following information:

- ◆ Names, addresses, nationalities, and ID numbers of the creditors or their representatives; and
- ◆ Total debts payable including the debt amount and number of due debts, and overdue interest; number of undue debts; number of secured debts and their security methods; number of unsecured debts; and the amount of compensation under commercial contracts.

Settlement of secured and unsecured debts

After commencement of bankruptcy proceedings and subject to the list of creditors prepared by the receiver based on the creditors' claims, the secured and unsecured debts will be settled.

Secured assets intended for use in implementing the recovery plan will be settled in accordance with the resolution approved in the creditors' meeting. Secured assets not intended for such use will be settled either under the regulations stipulated in secured agreements that are due, or before the declaration of bankruptcy in accordance with the suspension of secured agreements that are not due. Unsecured debts will be settled either after the company has successfully implemented the recovery plan or when the company is declared bankrupt by the court.

Priority of asset distribution

When the court declares the company bankrupt, the company's assets will be distributed in the following order of priority:

1. Bankruptcy charges.
2. Unpaid salary, severance allowance, social and health insurance and other benefits paid to the company's employees.
3. Debts incurred after the commencement of bankruptcy proceedings which are used for recovering the company's business activities.
4. Financial obligations to the government; unsecured debts payable to creditors on the list of creditors; secured debts which are not paid because the value of secured assets is not enough to cover such secured debts.

Business Reorganization

Though there is no specific legal framework for restructuring, the Bankruptcy Law implies that a company and its creditors have the right to negotiate and implement financial restructuring or

reorganization as part of a recovery plan, provided that it is approved by the company's creditors in the creditors' meeting and does not violate the Civil Code.

The recovery plan prepared by the company, based on the approval of the creditors, should be sent to the court, the creditors, and the receiver for their opinions and comments within 30 days after the creditors' meeting. The recovery plan must specify the solutions to recover the company's business activities, and the requirements, deadline, and plan to pay the debts. Such solutions may include capital mobilization, debt relief, technological innovation, etc.

Subject to the approved recovery plan, any secured or unsecured debts claimed by the creditors will be settled accordingly.

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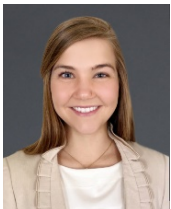
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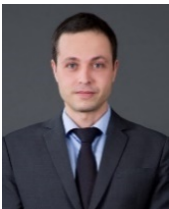
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