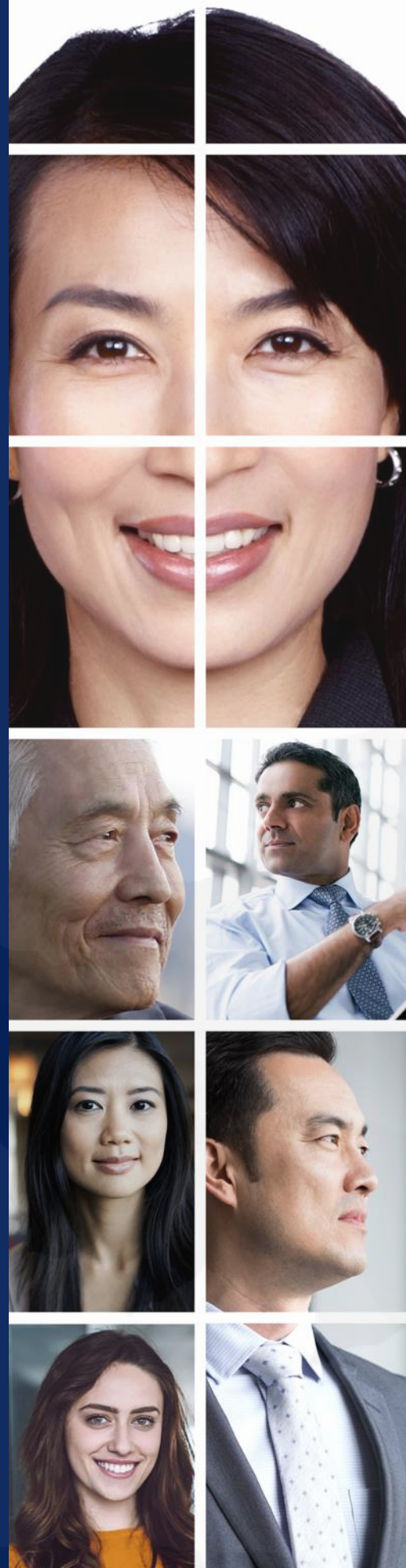
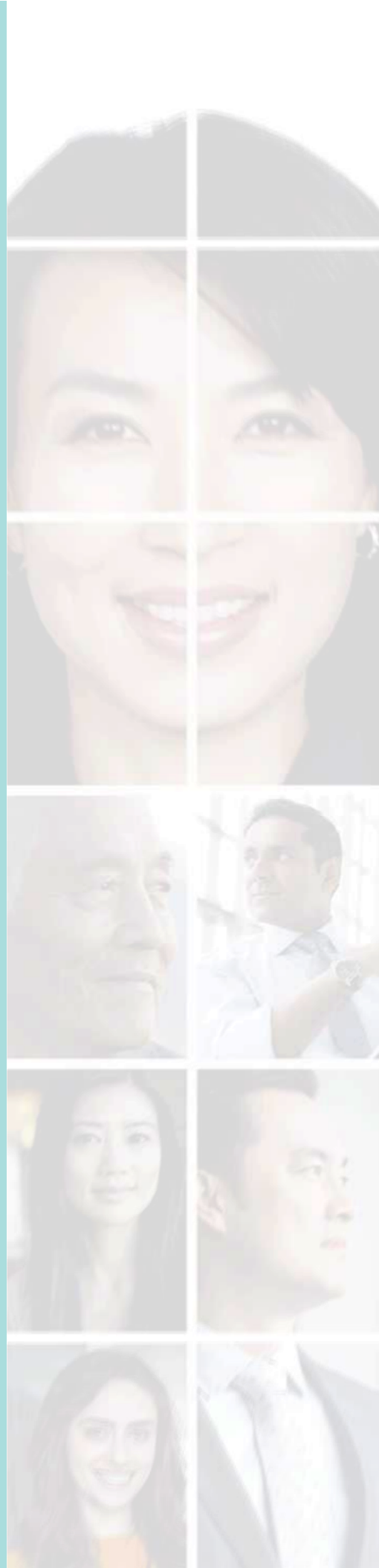


DNA GUIDE TO:
RESTRUCTURING IN
SOUTHEAST ASIA



CONTENTS

NO.	CONTENT	PAGE
1.	CAMBODIA	4
2.	INDONESIA	12
3.	LAOS	21
4.	MALAYSIA	28
5.	MYANMAR	37
6.	PHILIPPINES	43
7.	SINGAPORE	51
8.	THAILAND	61
9.	VIETNAM	68



OVERVIEW

This guide focuses on the main debt restructuring processes for corporate debtors across nine Southeast Asian jurisdictions. Presented in question-and-answer style, with the same set of questions answered in each jurisdiction, this guide contains contributions from various leading restructuring and insolvency practitioners in our firm's network of law firms. The responses give a bird's eye view on the restructuring processes in each jurisdiction and the key areas of concern.

While we have endeavoured to offer breadth and depth of content in laying out this guide, it is not exhaustive by any means and is subject to any legislative changes in each jurisdiction. If more in-depth advice is required, please do not hesitate to reach out to the respective lawyers whose contact details are set out at the end of each jurisdiction's chapter in this guide.

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CAMBODIA

1. CAMBODIA

1) What are the main debt restructuring processes in Cambodia?

The main debt restructuring processes in Cambodia are formal insolvency proceedings and out-of-court workouts.

Debtors must file a petition to commence formal insolvency proceedings if they fail to meet obligations exceeding KHR 5,000,000. Once a petition has been filed, the court must hold a hearing within 15 days if filed by the debtor or within 30 days if filed by a creditor or other authorities. After the hearing, the court has 14 days to decide on the application. During this time, the court may appoint an administrator, who can seek injunctive relief or a stay of actions by creditors against the debtor's assets. If the court approves the petition, the debtor or administrator must notify relevant registries and publish notices about claim submissions and the creditors' meeting.

Once insolvency proceedings are initiated, debtors can propose a "plan of compromise" to negotiate with creditors for partial business continuation or rehabilitation. The plan must be approved by creditors and sanctioned by the court. The court will do so if the plan meets certain legal requirements, including proper voting and equitable treatment of creditors. However, the court is not required to assess the plan's overall fairness. If the plan fails to meet these conditions, the court must reject it and make an order for liquidation. The court can only approve or reject the plan in full and cannot amend its terms.

Currently, Cambodia does not have formal provisions for out-of-court workouts. This may not be an option for all debtors, since Cambodian law requires a debtor to file a petition to commence insolvency proceedings within 30 days of failing to meet a valid obligation exceeding KHR 5,000,000. Failing to do so may result in certain penalties imposed on the debtor or its directors.

2) Who can initiate the process, and how can such requests be submitted?

A petition to the court to commence insolvency proceedings may be made by the debtor, creditor(s), the Director of Companies (i.e., the Ministry of Commerce), or the public prosecutor.

3) What criteria will the court consider when hearing a restructuring petition?

The court will first consider if the debtor is eligible for insolvency proceedings. Debtors are generally eligible if they are a valid entity under Cambodian law or if they have assets and a registered address in Cambodia, although certain entities such as banks, insurance companies or securities-related entities are ineligible for insolvency proceedings.

The court will then consider if there is sufficient legal basis for the petition, such as if the debtor has failed to meet obligations exceeding KHR 5,000,000. Finally, the court will also consider if there is enough evidence to prove the debtor's insolvency. The court is likely to dismiss a petition if the debtor's assets are unlikely to cover the costs of the proceedings.

4) Is shareholder approval required before the process can be initiated?

Shareholder approval is generally not required.

5) Must the debtor be insolvent before the process can be initiated?

Yes, a debtor must be insolvent before formal insolvency proceedings can be initiated. A debtor is insolvent when it has failed to pay one or more obligations exceeding KHR 5,000,000.

6) Does the debtor's management remain in control of the company during the restructuring process?

No. An administrator takes over management of the company during the restructuring process.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, an administrator can continue to carry on the debtor's business during restructuring proceedings. However, the administrator must obtain creditor consent before doing certain things, such as selling any real property by private treaty, transferring or selling any part of the business to certain related persons, or carrying out transactions that would irreversibly preclude a proposed plan of compromise.

Further, any plan of compromise entered into between the debtor and creditors may require the continuation of the debtor's business, although no payments related to income, dividends or equity may be made until all entitlements under the plan of compromise have been made.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

Once insolvency proceedings are commenced, no actions, proceedings, execution processes or any other measures can be initiated or continued by any creditor against the debtor or the estate's assets. If the debtor is a general or limited partnership, this stay of action will also apply to any actions, proceedings, or execution processes for the debtor's debt against the partners' assets. This stay of action remains in effect until the termination of insolvency proceedings.

Additionally, once an administrator is appointed and if applied for, the court can grant injunctive relief to freeze assets or a stay of action by any creditor against the debtor or the estate's assets.

However, there are several scenarios which could fall outside the scope of the stay of action. First, while secured creditors are entitled to have their claims satisfied according to the statutorily prescribed ranking, the administrator may deem that it is in the estate's best interest to allow them to enforce their security. Second, pending lawsuits which are not brought by creditors and unexecuted judgments would not fall within the scope of the stay of action. However, if a judgment has been rendered against the debtor, it is likely that such judgment would be treated as an unsecured claim which would be stayed. Third, a stay of action does not apply to provisional administrative claims, such as the administrator's remuneration, fees and expenses.

While a stay of action applies to assets situated in Cambodia, regardless of whether the debtor is formed under Cambodian or foreign laws, it is unclear whether it will apply to the assets of a domestic debtor situated overseas. In an informal restructuring context, the law is silent on whether a contractual stay between parties can be recognised.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

The law is silent in this regard.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

A utility provider may not terminate, alter or discontinue service to the administrator or the debtor solely because of the debtor's entry into insolvency proceedings or the non-payment of a debt owed to the utility provider for services rendered before insolvency proceedings began.

Apart from the above, the law is silent on the validity of contractual clauses that allow a counterparty to terminate or modify contractual rights in the event of the debtor's insolvency or entry into insolvency proceedings.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

The law is silent on rescue financing, whether within a fixed period before the business collapse, during restructuring or after the commencement of insolvency proceedings. The law also does not distinguish between financing provided in an out-of-court restructuring and formal insolvency proceedings. It bears noting that insolvency proceedings will not commence in the first place, unless the debtor's assets are sufficient to cover the costs of the proceedings or a related person advances a sufficient amount of money. As such, a related person may need to advance funds to cover these costs, including litigation costs.

A security interest may encumber the debtor's assets in the case of a plan of compromise. If the creditors approve a plan of compromise, assets may be sold, either subject to or free of any encumbrances or liens, in support of the plan.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

Once the administrator has been appointed by the court, the administrator has power over all of the debtor's assets. Further, the debtor has a statutory obligation to fully cooperate with the administrator and provide the administrator with all necessary information pertaining to the business of the debtor. Therefore, to the extent that information is requested by the administrator, the debtor would be obliged to provide it.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The administrator has the authority to organise a creditors' meeting (and any other subsequent meetings if deemed beneficial for the administration of the insolvency proceedings or upon written request of any creditor).

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

When creditors vote on a plan of compromise, they are grouped into separate classes, which comprise the class of secured claims holders and two other classes of claims holders defined by Cambodian insolvency law. It bears noting that a creditor whose claim is not impaired or affected by the plan of compromise does not have voting rights and a creditor who is a secured claims holder may have restricted voting rights. Further, only creditors with undisputed claims may vote, while those with disputed claims can vote only as allowed by the administrator or other voting creditors.

For a plan to be approved, at least one creditor class, with a minimum of three-fourths of the total claims in that class present at the meeting, must vote in favour of the plan. The administrator must then apply to court for approval of the plan within 7 days.

The court approval process verifies that voting complies with all legal requirements, creditors within each class are treated equally (unless they consent in writing to less favourable treatment) and dissenting creditors receive at least what they would in liquidation. The court must also be satisfied, among others, that no creditor receives more than their full claim amount and that shareholders or partners do not receive payments before creditors' entitlements are fully satisfied.

In the event that a class of creditors votes against the plan, these dissenting creditors may still be bound by the plan. This is because if the plan is court-approved, it becomes binding on all creditors.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a plan of compromise, as long as the plan is approved by the requisite majority of stakeholders and the court.

16) Is a debt-equity swap possible as part of the restructuring?

The law is silent in this regard.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Yes. Such sale is subject to the terms of a plan of compromise, which may include any method for resolving the debtor's insolvency. Such methods encompass the sale or disposition of any estate asset, either with or without encumbrances or liens, or the distribution of any estate asset among those with an interest in it.

18) Can the restructuring plan provide for the release of third-party claims?

The law is silent in this regard. A plan of compromise could in theory include third-party releases, as long as creditors have approved and the court has sanctioned the plan.

19) Is the process subject to a time limit?

There is no specified time limit for the entire process. However, there are time limits imposed on certain steps of the process. For instance, the debtor's petition must be heard by the court as soon as possible and no later than 15 days after filing by the debtor or 30 days after filing by a director, creditor or prosecutor. Further, if the court issues a written ruling after the court hearing, a creditors' meeting must be convened within 7 days of such ruling. If the plan of compromise is not approved at the meeting, liquidation will commence.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, the insolvency process may be terminated if a plan of compromise is proposed, approved by the creditors and sanctioned by the court.

Subsequently, if the approved plan of compromise is not implemented within the timeframe specified in such plan, the court shall immediately recommence insolvency proceedings against the debtor upon an application by the debtor, creditors, public prosecutor or administrator.

An application for recommencing insolvency proceedings should be made promptly as no specific timeframe is set out under Cambodian law.

Once the insolvency proceedings are recommenced, the insolvency proceedings and/or plan will convert into a liquidation process.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

Yes, if such debtors have their assets situated within Cambodia. This is the case where the debtor has tangible assets located within Cambodia

or is registered as having ownership of assets in a public register under the authority of the Royal Government of Cambodia.

22) Will the restructuring proceedings be recognised in other jurisdictions?

The law is silent in this regard.

23) Can foreign restructuring proceedings be recognised in Cambodia? Does Cambodia recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

Yes, foreign restructuring proceedings can be recognised in Cambodia if certain criteria are met. Unless otherwise provided under Cambodian insolvency law, the enforcement of foreign judgments requires an execution judgment from a Cambodian court with proper jurisdiction, and the foreign judgment must be issued by a foreign court with proper jurisdiction and with proper notice, issued from a foreign country which has a reciprocity agreement with Cambodia and not violate public policy.

However, Cambodian law does not recognise foreign restructuring representatives or office-holders. For insolvency proceedings in Cambodia, any court-appointed administrator must be selected from a national list maintained by the Ministry of Justice. This list is exclusively composed of Cambodian nationals who have obtained an administrator license from the Ministry of Justice.

Cambodia has not adopted international model laws on cross-border insolvency or recognition of insolvency-related judgments. There are no known plans of the Cambodian government adopting such laws or Cambodian judges participating in international guidelines for court cooperation in insolvency cases.

24) Have there been any recent developments in Cambodia, or any unique considerations relating to Cambodia?

A recent regulatory development occurred on March 12, 2024, when a new official proclamation (prakas) on the Granting of Administrator License in Insolvency Proceedings was adopted, establishing rules on the conditions, formalities and procedures for qualifying as an administrator, and aiming to enhance efficiency in insolvency proceedings.

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INDONESIA

2. INDONESIA

1) What are the main debt restructuring processes in Indonesia?

The main formal debt restructuring process (with court involvement) in Indonesia is Penundaan Kewajiban Pembayaran Utang (delay of payment) (“**PKPU**”). In addition to PKPU, the debt restructuring process may also involve bankruptcy proceedings.

In general, bankruptcy is the general confiscation of all the assets of a debtor that will be managed and liquidated by a receiver under the supervision of a supervisory judge. The receiver will divide up the debtor’s wealth, including that outside of Indonesian territory, among all creditors according to their rights. However, after the commercial court has issued a bankruptcy ruling and appointed the receiver and supervisory judge for the bankrupt debtor, the bankrupt debtor may still propose a restructuring (composition) plan to be approved by unsecured creditors and the court. If the plan is so approved, the restructuring plan must be ratified by the commercial court. Once the restructuring plan is ratified and final and binding, the bankruptcy status over the debtor will end or be revoked by the commercial court.

PKPU is a debt restructuring process (involving the commercial court) for a debtor who needs more time to repay or restructure its debts, unlike bankruptcy where the debtor is unable to repay debts or is insolvent. Once the court declares the debtor is under PKPU, the debtor retains its rights subject to prior approval and supervision of the administrator and the supervisory judge. After the commercial court has issued a temporary PKPU ruling for a maximum of 45 days and appointed an administrator and supervisory judge, the debtor may propose a restructuring (composition) plan to be approved by the secured and unsecured creditors. If the plan is rejected, the debtor will be automatically declared bankrupt. Upon request of the debtor, the secured and unsecured creditors may also approve a permanent PKPU, under which the PKPU period can be extended for up to 270 days (which includes the temporary PKPU period).

In addition to the formal processes above, consensual out-of-court workouts are also possible. If the debt restructuring is only meant for certain creditors, a company can restructure its debt obligations by entering into formal agreements with the relevant parties.

2) Who can initiate the process, and how can such requests be submitted?

The restructuring processes may be initiated by a debtor or any creditor provided that the debtor has at least 2 creditors and at least 1 of the debtor’s debts is due and payable. The restructuring process is initiated by submitting the petition to the commercial court having jurisdiction over the debtor’s legal domicile.

However, the above does not apply for certain entities like banks, certain payment service providers, securities companies and state-owned companies, in that only certain parties like Bank Indonesia or certain government authorities can initiate the restructuring processes of those entities.

3) What criteria will the court consider when hearing a restructuring petition?

For bankruptcy and/or PKPU, the court usually approves the submitted petition if the debtor has at least 2 creditors, at least 1 of the debtor's debts is due and payable and the applicable facts are straightforward. For PKPU, the petition must be signed and submitted by the creditor (as the principal) and its legal attorney.

4) Is shareholder approval required before the process can be initiated?

Shareholder approval is required if the debtor files a bankruptcy or PKPU application against itself.

5) Must the debtor be insolvent before the process can be initiated?

A debtor need not be insolvent before the bankruptcy or PKPU process can be initiated.

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management remains in control of the company during the PKPU process, subject to prior approval and supervision of the administrator and the supervisory judge.

However, when a debtor has been declared bankrupt, the receiver takes control of the debtor's management under the supervision of a supervisory judge.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, a debtor can continue to carry on business during the PKPU process.

For bankruptcy proceedings where a restructuring plan is rejected or not offered, a debtor may continue to carry on business if the receiver or creditor proposes this, and the proposal is approved by creditors representing more than half of all acknowledged and temporarily accepted claims that are unsecured at a creditors' meeting. Any carrying on of the business would be temporary, with the main purpose being to enable the orderly realisation of the debtor's assets. This can also be discontinued on the receiver's or creditor's proposal if the business causes further loss or does not provide added value to the debtor's assets that will be distributed to the creditors.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

Once declared bankrupt, a stay arises to prevent a debtor's secured creditors from taking certain enforcement actions for a period of 90 days. For PKPU, a debtor may also benefit from a stay lasting as long as the PKPU period which can be up to 270 days.

However, a stay pursuant to a bankruptcy declaration does not apply to creditors which are secured by cash deposits and creditors' rights of set-off.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

The law is silent in this regard, although if the creditors' actions resulted in losses to the bankruptcy assets or could harm other creditors, the receiver can file a lawsuit against the particular creditors.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

No. Contracting parties must still comply with termination provisions in the relevant contracts. Termination may also occur as an effect of bankruptcy or PKPU declarations for certain contracts.

For example, receivers or lessors may be able to terminate lease agreements with the bankrupt lessee if the lease agreements contained provisions for the termination of the lease with prior written notice. Once the bankruptcy declaration is made, the lease payment is considered debt that the lessor may pursue in bankruptcy by submitting its claim in the bankruptcy proceeding.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, if the debtor is not declared insolvent.

Save for multiple mortgage security interests granted over land and building that can be ranked in a hierarchy in the debtor's insolvency, multiple security interests generally cannot be granted over the debtor's assets. Therefore, rescue financing can only be secured by a new security on the debtor's otherwise unencumbered assets (or encumbered assets, but only with the consent of and release by the existing secured creditors) or subsequent ranking security on the debtor's land and building assets that are already subject to an existing mortgage security with the cooperation of the existing mortgage security holders.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

For bankruptcy, within 5 days of the receipt of the bankruptcy ruling by the receiver and supervisory judge, the receiver shall announce in the state gazette and in at least 2 daily newspapers the main points of the

bankruptcy ruling, including names of the supervisory judge, receiver and temporary creditors' committee and the time and place of the first creditors' meeting. Other announcements include details of submission of creditors' claims, the availability and timeline of the payment distribution list at the court.

For PKPU, the administrator shall immediately announce the PKPU ruling through 2 daily newspapers as appointed by the supervisory judge, and other details such as the invitation to attend the deliberation court hearing, names of the supervisory judge and administrator, restructuring (composition) plan, deadline for claim submission and schedule for the creditors' meeting to discuss the restructuring (composition) plan.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The supervisory judge (with the assistance from the appointed receiver or administrator) will organise a creditors' meeting at its own discretion or upon the request of the creditors' committee or of at least 5 creditors representing one-fifth of all claims acknowledged or acknowledged with condition.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

For bankruptcy, when creditors vote on a restructuring (composition) plan proposed by the bankrupt debtor, the plan will pass if more than half of the unsecured creditors attending the creditors' meeting representing at least two-thirds of the total amount of acknowledged or temporarily acknowledged claims of unsecured creditors votes in favour of the plan. In the event that any creditor votes against the plan, the dissenting creditor will still be bound by the plan once ratified and may file an appeal to court within 8 days of the ratification.

For PKPU, when creditors vote on a restructuring (composition) plan proposed by the debtor, the plan will pass if more than half of the unsecured creditors whose rights are acknowledged or temporarily acknowledged attending the meeting and representing at least two-thirds of the total amount of acknowledged or temporarily acknowledged claims of unsecured creditors at the meeting, and more than half of the secured creditors representing at least two-thirds of the total amount of claims of creditors at the meeting, vote in favour of the plan. In the event that any creditor votes against the plan, the dissenting creditor will not be bound by the plan once ratified, and will be compensated an amount equal to the lowest value among the values of the security securing its debt or the debt's actual value. In practice however, the amount of compensation due to dissenting or abstaining creditors is usually regulated by provisions in the plan.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a restructuring (composition) plan, as long as the modification is agreed by the relevant secured creditors and the debtor, and the composition plan is ratified.

16) Is a debt-equity swap possible as part of the restructuring?

This is possible as part of a ratified restructuring (composition) plan, but shareholder approval is required for the conversion of the creditors' receivables against the company to new shares. The type of receivables that can be so converted are those incurred as a result of the company receiving the funds or assets which can be valued in money, the company's guarantor or security provider paying the company's secured or guaranteed debts, or the company acting as guarantor or security provider of a third party and the company has received benefits in the form of money or goods that can be valued in money which has been actually received by the company.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

No, the debtor's secured assets cannot be sold free of encumbrances as part of the restructuring.

18) Can the restructuring plan provide for the release of third-party claims?

No, the restructuring plan cannot provide for the release of third-party claims.

19) Is the process subject to a time limit?

There are certain time frames in the bankruptcy and PKPU procedures. For example, the court must rule on a bankruptcy filing within 60 days of the registration of the bankruptcy application. However, there is no strict time limit for the management and sale of bankruptcy assets which may take years in practice.

For PKPU, the court must approve the temporary PKPU within 3 days of the registration of the application if filed by the debtor, or within 20 days of the registration of the application if filed by the creditor. The temporary PKPU may be granted for up to 45 days, after which creditors must vote to determine whether the composition plan is approved or rejected, or whether to grant a permanent PKPU. This permanent PKPU can last up to 270 days from the date the temporary PKPU is granted.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, a ratified restructuring (composition) plan can be terminated before its completion upon the creditors' request if the debtor is negligent in fulfilling its obligations under the ratified restructuring (composition) plan. In that case, the debtor must prove that the restructuring (composition) plan has been fulfilled.

If a ratified restructuring (composition) plan is terminated by the commercial court, then the bankruptcy proceeding will be reopened (for bankruptcy) or the debtor will be declared bankrupt (for PKPU) and the receiver will proceed with managing and selling the bankruptcy assets.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

Indonesian law does not distinguish between debtors based on their state or country of incorporation. However, for a debtor which is not domiciled in Indonesia but performs its profession or business in Indonesia, the court that has authority to rule on bankruptcy and PKPU is the court with jurisdiction over the location of the domicile or headquarters of the debtor performing its profession or business in Indonesia.

22) Will the restructuring proceedings be recognised in other jurisdictions?

An Indonesian bankruptcy ruling serves as a general confiscation of all the debtor's assets, which theoretically includes assets located outside of Indonesia. However, Indonesian law does not detail how assets are foreclosed abroad. Given this, foreclosure of assets outside of Indonesia in practice is challenging and would depend on the laws of the specific jurisdiction where the assets are located and any treaty between these jurisdictions. In practice, foreign courts have acknowledged PKPU or bankruptcy rulings issued by the Indonesian commercial court.

23) Can foreign restructuring proceedings be recognised in Indonesia? Does Indonesia recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

Foreign court rulings are not recognised in Indonesia. If there is a foreign court ruling declaring bankruptcy, the bankruptcy declaration would not be deemed equal to a bankruptcy ruling of the Indonesian court. However, the creditor can file a new lawsuit in Indonesia and present the foreign court ruling as evidence. At present, there are no examples of such recognition requests.

24) Have there been any recent developments in Indonesia, or any unique considerations relating to Indonesia?

The most recent and famous PKPU case in Indonesia is Garuda Indonesia's restructuring, under which Garuda Indonesia sought acknowledgment from a foreign court and proposed a debt-to-equity swap as one of the payment methods in their composition plan.

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A blue-tinted photograph of a traditional Lao stupa, likely a Phra Prang, featuring a tall, tiered central spire and numerous smaller spires. The structure is surrounded by a decorative fence with a repeating scalloped pattern. The word "LAOS" is overlaid in a white serif font in the center of the image.

LAOS

3. LAOS

1) What are the main debt restructuring processes in the Lao People's Democratic Republic (i.e., Laos)?

The main debt restructuring process in Laos is the formal rehabilitation and bankruptcy proceedings. This process generally involves several stages.

This process typically starts with a bankruptcy petition being filed and the Lao People's Court granting an adjudication order once satisfied that such order should be granted. An adjudication order prohibits creditor action against the debtor and its assets unless court approval is obtained.

The court will then appoint an asset administrator to scrutinise the debtor's liquidity, finances, assets, and potential for bankruptcy, to report its findings to the court and the creditors, as well as to handle claims for repayment. The administrator is appointed from a list provided by the Minister of Justice, and includes individuals and legal entities selected by the Lao Minister of Justice based on specific criteria to manage the administration, assets, and liquidation of the indebted company. The court will also advertise the insolvency proceedings to provide notice to creditors of the process.

Within 30 days of the adjudication order, the court will call for a meeting of creditors to decide on various issues.

The administrator will chair the meeting, unless the creditor chooses its own chair, where the debtor must present, explain and answer questions on any rehabilitation plan. The plan should detail the sources of finance, organisational restructuring, and asset sales or transfers. The plan will be adopted if approved by a majority of creditors representing more than two-thirds of the total debt and sanctioned by the court. Both secured and unsecured creditors must approve the plan. Creditors who do not attend the meeting may submit written opinions, which will be considered as if they had attended. If the plan is accepted but a creditor is adversely affected, it may request the court to cancel the plan. If the plan is accepted, the debtor may also continue its operations under the control of the administrator who will manage the restructuring plan. If the plan is not accepted and requires amendments, the proposing party must revise it within a specified timeframe and resubmit it for the next creditors' meeting. If the plan is ultimately rejected, the debtor will enter bankruptcy proceedings.

2) Who can initiate the process and how can such requests be submitted?

Insolvent enterprises or enterprises facing imminent insolvency, partners and shareholders representing at least 20% of the total voting rights if the enterprise has not filed for bankruptcy or rehabilitation, or members of cooperatives representing one-fifth of the total members in case the cooperative is in financial difficulty and unable to pay its debts.

3) What criteria will the court consider when hearing a restructuring petition?

The court will consider various grounds when hearing the restructuring petition, including whether the debtor is a legal entity incorporated in Laos, is voluntarily requesting a bankruptcy declaration, is proposing a rehabilitation plan when there is a bankruptcy petition, has reached an agreement for settlement with its creditors, is able to implement the requirements of the settlement or rehabilitation plan, has violated the court's order during the rehabilitation period, and if the creditors' meeting rejected any settlement or the rehabilitation plan.

4) Is shareholder approval required before the process can be initiated?

Yes, the shareholders must issue the minutes or resolution approving the debtor's rehabilitation or bankruptcy process.

5) Must the debtor be insolvent before the process can be initiated?

Yes, a debtor must be insolvent before rehabilitation or bankruptcy proceedings can be initiated. A debtor is insolvent when, for instance, it is unable to meet debt obligations by their due dates, or where it has more debt liabilities than assets.

6) Does the debtor's management remain in control of the company during the restructuring process?

No. An administrator or other person appointed by the court controls the management of the company during the rehabilitation or bankruptcy process. Such administrator or person also administers (if there is a debtor-in-possession, which refers to a debtor who retains control of its assets and continues to operate its business while undergoing bankruptcy proceedings) or is the custodian of (if there is no debtor-in-possession) all assets owned or under the control of the company.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, an administrator or other person appointed by the court, can continue to carry on the debtor's business during restructuring proceedings. However, there are certain restrictions on the operation of the debtor's business. For example, the debtor is not allowed to conceal its assets, pay unsecured debts (except for debts incurred after the administration of assets, and payment of employees' salary, and the administrator's wages and/or expenses), waive or not claim any account receivable, or convert unsecured to secured debts.

Further, if the debtor is a debtor-in-possession and any of its business activities affects its ability to pay debts or cause any reduction in value, such business activities must not only be approved by the administrator but also be reported to the court.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

Yes, once a bankruptcy petition is filed, a moratorium on enforcing security or commencing legal proceedings against the debtor arises. This continues until a final resolution to the proceedings is reached, such as when a rehabilitation plan is confirmed or the debtor is liquidated.

Such a moratorium suspends certain legal and enforcement actions (including filing of petition, taking possession, confiscation of assets, or selling, transferring or entering into any other encumbrance with a third party) against the debtor or its assets without court approval. However, secured creditors remain entitled to seek court approval for commencing a legal action, when the debtor's assets used as security may decrease in value, be damaged or be lost during the rehabilitation, or are not important and necessary for the reorganisation.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

Parties acting in breach of a moratorium may incur criminal and civil liability.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

While there is no express prohibition on this imposed by law, creditors may only terminate contracts with the debtor with the consent of the administrator or court.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, a debtor may seek rescue financing as part of the rehabilitation process.

The debtor or the administrator may obtain new financing for the rehabilitation, and loans may be secured against any asset of the debtor that is not otherwise encumbered or secured by any security on the debtor's assets that is given priority in the distribution of assets. Further, the payment of the principal and interest of the loans is given priority immediately after employees' salaries or wages are paid.

The sources of financing used for the rehabilitation should be defined in the approved rehabilitation plan.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

The debtor or the administrator must provide the creditors with documents and other information on the rehabilitation or bankruptcy procedure. Creditors are also entitled to examine documents such as the statement of affairs, records of the debtor's accounting activities, evidence of proved debts and minutes of the creditors' meeting.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The assigned judge, the administrator or creditors have the authority to organise a creditors' meeting (and any other subsequent meetings as may be required).

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

The rehabilitation plan will be adopted by a resolution of the creditors' meeting if a majority, representing more than half of the total number of creditors (or their representatives) attending the meeting and two-thirds in value of all debts, votes in favour of the plan. In the event that any creditor votes against the plan, this dissenting creditor may still be bound by the plan. However, if any creditor is negatively affected by terms of the plan that are not in compliance with regulatory requirements, that creditor can apply to court to cancel the resolution.

15) Can the restructuring plan modify secured claims?

Yes, secured claims can be modified by the terms of a restructuring or rehabilitation plan, provided that the plan is approved by the requisite majority of stakeholders and the court. The modification of secured claims under such a plan typically requires meeting specific legal and procedural requirements, including obtaining the approval of both the affected creditors and the court. This ensures that the modifications are fair and in accordance with legal standards.

16) Is a debt-equity swap possible as part of the restructuring?

The law is silent in this regard.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Yes, although this is limited only to assets that are exempted from administration. These include assets owned by the relevant individual enterprise or the general partners in the partnership, and include personal items that have a value not exceeding 3,000,000 Kip per person, or tools and equipment necessary for personal work that have a value not exceeding 5,000,000 Kip per item.

18) Can the restructuring plan provide for the release of third-party claims?

The law is silent in this regard.

19) Is the process subject to a time limit?

The rehabilitation plan must be implemented within the timeframe set out in the plan approved by the court but cannot exceed 3 years from the date on which the court issued the order to rehabilitate the debtor.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

No. The restructuring process cannot be terminated before the completion of the approved restructuring plan, unless the debtor intends to modify the rehabilitation plan.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

No. Debtors incorporated in a foreign jurisdiction cannot use the restructuring processes.

22) Will the restructuring proceedings be recognised in other jurisdictions?

The law is silent in this regard and has no cross-border insolvency provisions. Laos is also not a signatory to any international insolvency treaties.

23) Can foreign restructuring proceedings be recognised in Laos? Does Laos recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

Foreign restructuring proceedings can be recognised in Laos when there is a final foreign court decision, and the final foreign court decision is recognised by the Lao People's Court. The foreign judgments with respect to such proceedings would be enforced in Laos in accordance with domestic law.

24) Have there been any recent developments in Laos, or any unique considerations relating to Laos?

As Laos has no specialist bankruptcy court and a limited legal framework for proceeding with rehabilitation and bankruptcy matters, implementing restructuring, rehabilitation and bankruptcy processes can be challenging. So far, only one precedent bankruptcy case in the Lao Court has been reported.

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MALAYSIA

4. MALAYSIA

1) What are the main debt restructuring processes in Malaysia?

In Malaysia, debtors can restructure through formal insolvency proceedings or informal consensual workouts. The latter is usually a precursor to the former. The main formal insolvency proceedings are schemes of arrangement, corporate voluntary arrangements and judicial management.

A scheme of arrangement is a binding, court-sanctioned compromise entered into between a company and its creditors. The scheme process prevents creditors from taking actions that may lead to the dissolution of the company in financial distress, and can be imposed on dissenting creditors and members if the statutory voting majorities have been obtained. Both insolvent and solvent entities may utilise the scheme process.

A corporate voluntary arrangement is a corporate rescue mechanism that serves as a consensual statutory restructuring tool. The process imposes and binds creditors to a proposed voluntary arrangement if the statutory voting threshold is achieved. This process is not supervised by the court.

Judicial management involves the appointment of a judicial manager over an insolvent corporate debtor. In applying for a judicial management order, the applicant must show that there is a reasonable prospect of, inter alia, preserving all or part of the company as a going concern and that the creditors' interests would be better served than in a winding up.

2) Who can initiate the process and how can such requests be submitted?

The company or any creditor of the company can initiate a scheme of arrangement or judicial management by applying to the court. The company's directors can propose a voluntary arrangement to the company and its creditors.

3) What criteria will the court consider when hearing a restructuring petition?

For a scheme of arrangement, the court will typically consider the identification and composition of creditor classes, whether the proposed scheme is sufficiently fair, reasonable and viable, whether procedural requirements have been fulfilled and whether the members and creditors had all the relevant and necessary information required to make an informed decision.

For judicial management, the court must be satisfied that the company is or will be unable to pay its debts. If so, the court will consider if the appointment of a judicial manager is likely to achieve any of the aims of judicial management, which include the survival of a company and the whole or part of its business as a going concern, the approval of a

scheme of arrangement, or a more advantageous realisation of the company's assets than on a winding up.

The judicial management and corporate voluntary arrangement processes may not be available to all entities, such as certain licensed or regulated institutions.

4) Is shareholder approval required before the process can be initiated?

Shareholder approval is generally not required.

5) Must the debtor be insolvent before the process can be initiated?

A debtor need not be insolvent before these processes can be initiated, although in the case of judicial management, a company must be or will be unable to pay its debts before it can be placed in judicial management.

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management remains in control of the company during the scheme of arrangement and corporate voluntary arrangement processes.

However, where a debtor has entered judicial management, the judicial manager takes control of the debtor's management.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, a debtor can continue to carry on business during restructuring proceedings.

However, for a scheme of arrangement, any disposition of the company's property, other than in the ordinary course of business, made after the grant of a restraining order by the court will be void unless otherwise ordered.

Directors may be liable for wrongful trading if they cause the company to incur debts without a reasonable or probable expectation of repayment. Directors who conduct the business of the company with intent to defraud the creditors may be liable for fraudulent trading, and they may be held personally liable for company debts. Although there is no specific statutory defence, directors may be excused either wholly or partly from their liabilities if they acted honestly and reasonably.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

A debtor intending to propose a scheme to its creditors may, upon the filing of an application for a restraining order, benefit from an automatic moratorium that remains until the application is decided by the court or until the lapse of 2 months from the date of filing of the application, whichever is earlier. When the court decides such application, the court

may grant a restraining order which generally lasts for 3 months from the date on which the restraining order is granted.

A debtor intending to propose a corporate voluntary arrangement may also benefit from an automatic moratorium that commences when certain documents such as the company's statement of affairs, the terms of the proposed voluntary arrangement and a statement from the nominee are filed to the court. Such moratorium generally lasts for 28 days.

A debtor that has applied for judicial management may, upon the making of such application, benefit from an automatic moratorium that remains until the date the judicial management order is made or such application is dismissed.

Moratoriums granted pursuant to a scheme of arrangement, corporate voluntary arrangement or judicial management application prevent creditors from attempting to wind up, commence or continue certain proceedings or take certain enforcement actions against the debtor. This is with the exception of judicial management, where a secured creditor may, upon notifying the judicial manager and on certain conditions, enforce security over the company's movable property or repossess any goods in the company's possession under any hire purchase agreement, chattels leasing agreement or retention of title agreement while a judicial management order is still in force. Those certain conditions include when the judicial management order poses a high risk to the existence of the goods or movable property.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

Parties acting in breach of a moratorium or restraining order may be held in contempt of court.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

For a scheme of arrangement, a restraining order may include an order prohibiting the termination of contracts. For judicial management, contracts for essential goods and services cannot be terminated for the sole reason that a debtor is insolvent.

There is otherwise no express prohibition on terminating contracts with a debtor while the restructuring is ongoing.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, rescue financing is possible for the scheme of arrangement and judicial management processes. The court may order that rescue financing debt be repaid in priority to other debts, or secured by new security over unsecured assets, or by security of the same or higher priority than an existing security provided such existing security interests are adequately protected.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

For a scheme of arrangement, at the convening stage, the debtor company shall disclose all material information to assist the court in determining the classification of creditors, the proposed scheme's realistic prospects of success, and any allegation of abuse of process. This includes any private commercial arrangements or payment arrangements between the debtor company and the creditors and any voting agreement with any class of creditors for the proposed scheme. In any case, where there is any omission of information, the test is whether the omitted information would have changed any of the creditors' views on the merits of the scheme. Where the court orders a meeting to be convened, the company must include in the notice summoning the meeting the instructions to creditors on how and when to file a proof of debt.

The debtor company must also disclose all material facts to the creditors at the meeting stage to allow the creditors to exercise their voting rights meaningfully. The information provided, including financial information, should not only enable creditors to determine their expected returns under the scheme but also relate to the commercial viability of the scheme as a whole.

Alternatively, for a pre-packed scheme proposed between a company and its creditors to be approved, the court shall be satisfied that each creditor has been provided with a statement containing, inter alia, information concerning the company's property, assets, business activities, financial condition and prospects. The statement must also include information on the manner in which the terms of the proposed compromise or arrangement will, if it takes effect, affect the rights of the creditor, and any other information necessary for the creditor to make an informed decision on the proposed compromise or arrangement.

A restructuring plan may potentially be set aside or terminated before its completion due to insufficient disclosure as to how the scheme debts are computed. Although information such as security documents in respect of secured creditors shall be disclosed, it is not necessary to exhibit all the documents to support the selection of creditors in each class of creditors at the convening stage.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

For a scheme of arrangement, the company or any creditor may organise a creditors' meeting at which a scheme will be proposed, although this is subject to the court's discretion.

For a corporate voluntary arrangement, a nominee has the authority to summon a creditors' meeting where a moratorium is in force.

For judicial management, the judicial manager of a company may summon a meeting of the company's creditors, if he thinks fit, and shall summon such a meeting if so directed by the court.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

When creditors vote on a scheme of arrangement or a proposal for corporate voluntary arrangement, they are placed into separate classes based on the nature of their debts. The scheme or proposal will pass if agreed to by a majority of 75% of the total value of the creditors present and voting at the creditors' meeting.

In the event that any class of creditors vote against the scheme, these dissenting creditors may still be bound by the plan. The court may cram down dissenting creditors if at least one class of creditors has consented, provided that at least 75% of the overall value of creditors across all classes have agreed to the scheme and several other requirements that are meant to safeguard dissenting creditors are met. However, for corporate voluntary arrangement or judicial management, no such cram down powers are available.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a scheme of arrangement, as long as the scheme is approved by the requisite majority of stakeholders and the court.

16) Is a debt-equity swap possible as part of the restructuring?

Yes, debt-equity swaps are possible as part of a scheme of arrangement, corporate voluntary arrangement or judicial management.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Yes, a judicial manager may dispose of the debtor's property secured by a floating charge as if it were unencumbered. However, court approval is required for disposal of assets that are subject to any security other than a floating charge and any goods under a hire purchase agreement, chattels leasing agreement or retention of title agreement.

For a scheme of arrangement or a corporate voluntary arrangement, such sale is subject to the scheme's or proposal's terms, which may specify that a security holder releases its security over the debtor's assets for a sale.

18) Can the restructuring plan provide for the release of third-party claims?

The release of third-party claims in a scheme of arrangement, corporate voluntary arrangement and judicial management is contingent upon the agreement of all parties involved, in particular between the debtor company and the creditors. The Malaysian courts have held that it is established in law that a scheme of arrangement between a scheme company and its creditors may discharge not only the debts and liabilities

of the scheme company but also the debts and liabilities of the guarantors for the same debts and liabilities.

19) Is the process subject to a time limit?

For a scheme or corporate voluntary arrangement, time limits are imposed by the scheme's or corporate voluntary arrangement's terms.

Judicial management generally lasts for 6 months from the date of the making of the judicial management order, although a judicial manager may apply to extend this period for another 6 months subject to such terms as the court may impose.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, an approved restructuring plan can be challenged and set aside before it is completed. Grounds for such challenge or termination include incorrect creditor classification, improper legal discharge of debts, unfairness to creditors, lack of a realistic prospect of success and insufficient disclosure of debt computation.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

Debtors incorporated outside Malaysia can apply for a scheme of arrangement in Malaysia. In determining if such scheme is to be passed, the Malaysian courts will consider, amongst other key factors, whether the debtor has its centre of main interest in Malaysia. Recent examples include the Malaysian High Court sanctioning a scheme for Nam Cheong Ltd, a Bermuda-incorporated company, and a restraining order for Sapura Energy Bhd and its subsidiaries (which include Bermuda-incorporated entities). However, debtors incorporated outside Malaysia cannot utilise corporate voluntary arrangement or judicial management.

22) Will the restructuring proceedings be recognised in other jurisdictions?

This would depend on recognition principles under the specific jurisdiction's laws. Malaysia has not incorporated the UNCITRAL Model Law on Cross-Border Insolvency into its domestic legislation.

23) Can foreign restructuring proceedings be recognised in Malaysia? Does Malaysia recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

Although Malaysia has not incorporated the UNCITRAL Model Law on Cross-Border Insolvency into its domestic legislation, it is possible for foreign restructuring proceedings to be recognised in Malaysia based on common law principles.

24) Have there been any recent developments in Malaysia, or any unique considerations relating to Malaysia?

No significant developments in recent times.

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MYANMAR

5. MYANMAR

1) What are the main debt restructuring processes in Myanmar?

The main formal restructuring process in Myanmar is the “Rehabilitation Proceedings”, which encompasses two stages: the company rescue stage and the company plan stage. A rehabilitation manager and a plan supervisor are appointed as part of the process, and are subject to court supervision. The appointment of a rehabilitation manager takes effect when the court makes an order on appointment or on the delivery to the insolvency practitioner of the written appointment document by the company or the secured creditor. The principal role of a rehabilitation manager is to manage the affairs of the company and to the extent possible continue the business and work towards achieving a better result for the company’s creditors as a whole than would be likely if the company were wound up. The plan supervisor sets out the rehabilitation plan; undertakes the duties regarding variation or termination of the plan, acts as agent of the company; implements the rehabilitation plan as quickly and efficiently as is reasonably practicable.

2) Who can initiate the process and how can such requests be submitted?

A court application for a rehabilitation order in respect of a company may be made by the company (or its liquidator if the company is in liquidation) or any director or creditor of the company. A rehabilitation manager can be appointed by the company, a secured creditor of the company or court order.

3) What criteria will the court consider when hearing a restructuring petition?

If the court is satisfied that the company is unable to pay or unlikely to be able to pay its debts as and when they become payable and there are reasonable prospects that any regulatory objectives can be achieved, then the court may, on hearing a rehabilitation application, make an order that a rehabilitation manager be appointed, any interim orders or treat the application as a winding-up petition. Such regulatory objectives include providing an appropriate structure for the supervision and administration of insolvency proceedings; providing predictable and consistent outcomes for parties involved in insolvency proceedings; providing timely, efficient and impartial resolution of insolvencies; facilitating the rescue and rehabilitation of viable businesses; providing an efficient liquidation process for non-viable businesses; and providing equitable treatment between similarly situated creditors.

A rehabilitation manager cannot be appointed if the company is a bank, non-bank financial institution or certain regulated entities.

4) Is shareholder approval required before the process can be initiated?

The law is silent in this regard.

5) Must the debtor be insolvent before the process can be initiated?

A debtor must be unable to pay or unlikely to be able to pay its debts as and when they become payable before the rehabilitation process can be initiated.

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management can remain in control of the company if this is stated in the rehabilitation plan. However, all the powers of the directors cease unless the rehabilitation manager sanctions their exercise, and the rehabilitation manager may remove or appoint directors of the company.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes. The debtor or the rehabilitation manager, acting as the debtor's agent, can continue to carry on business during restructuring proceedings.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

During the company rescue stage, generally no action, proceeding or arbitration against the debtor or its property may be continued or commenced. Actions pertaining to attachment, sequestration, distress or execution against the debtor's property are also void. The rehabilitation manager may, during this stage, exercise powers similar to that of a liquidator in protecting the company and its property in a liquidation.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

The law is silent in this regard.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

This is not expressly prohibited under Myanmar insolvency law.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Rescue financing may be possible under Myanmar insolvency law.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

The rehabilitation manager may issue a written notice requiring one or more relevant persons to make out and submit to him a statement of the affairs of the company. At any time during either stage of a rehabilitation proceeding, the rehabilitation manager may voluntarily agree to allow inspection of the company's books and papers by creditors and contributories or the court may make an order for inspection of the

company's books and papers by creditors and contributories if they so request.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The rehabilitation manager has the authority and obligation to convene a creditors' meeting, if requested by creditors who in number exceed 10% of the total number of creditors, or whose claims have an aggregated value exceeding 10% of the total value of creditors' claims, and the rehabilitation manager considers it desirable to consult with creditors during the course of the rehabilitation proceeding.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

A rehabilitation plan will pass if approved by a majority of creditors. The requisite majority is creditors whose aggregate claims is at least 50% of the total value of claims of the creditors voting at the meeting and who in number are at least 50% of the total number of creditors voting at the meeting.

15) Can the restructuring plan modify secured claims?

The rehabilitation manager may, only with the written consent of secured creditors and/or the leave of court, dispose of or otherwise deal with charged property (whether fixed or floating). The modification of secured claims can be provided for in a rehabilitation plan approved at a creditors' meeting and by the court.

16) Is a debt-equity swap possible as part of the restructuring?

The law is silent in this regard.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Save for where expressly permitted under Myanmar insolvency law, the rehabilitation manager is not permitted to sell the debtor's property that is subject to security. The sale of the debtor's secured assets can be provided for in a rehabilitation plan approved at a creditors' meeting and by the court.

18) Can the restructuring plan provide for the release of third-party claims?

During the company rescue stage, legal proceedings may not be instituted or continued against any guarantor of the company's debts or obligations without the court's leave. Although release of third-party claims is not expressly provided under Myanmar insolvency law, the approved rehabilitation plan can provide on the extent of any compromise of creditor claims and on the extent to which the company is to be released from its debts.

19) Is the process subject to a time limit?

Time limits are imposed by terms of the approved rehabilitation plan.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, a rehabilitation plan may be terminated by creditors or the court if the rehabilitation objectives are not achieved or if the company is to be wound up.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

No. Although Myanmar insolvency law recognises the UNCITRAL Model Law on Cross-Border Insolvency, the implementation of cross-border insolvency provisions has not yet taken effect.

22) Will the restructuring proceedings be recognised in other jurisdictions?

At present, there are no examples of restructuring proceedings being recognised in other jurisdictions.

23) Can foreign restructuring proceedings be recognised in Myanmar? Does Myanmar recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

At present, there are no examples of foreign restructuring proceedings, representatives or office-holders being recognised in Myanmar.

24) Have there been any recent developments in Myanmar, or any unique considerations relating to Myanmar?

The Myanmar restructuring regime is still in its infancy. While company winding-up matters have been commenced, court rulings are not yet available. No official body has been established yet for the registration of insolvency and restructuring practitioners.

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An aerial photograph of a coastal city in the Philippines, featuring a multi-lane highway, a rocky shoreline, and a dense urban skyline in the background. The image is overlaid with a dark blue filter. The word "PHILIPPINES" is written in large, white, serif capital letters across the center of the image.

PHILIPPINES

6. PHILIPPINES

1) What are the main debt restructuring processes in the Philippines?

The main debt restructuring processes in the Philippines are formal rehabilitation and informal out-of-court restructurings.

Rehabilitation refers to the debtor's restoration to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover, by way of the present value of payments projected in the rehabilitation plan, more if the debtor continues as a going concern than if it is immediately liquidated.

Rehabilitation requires court approval and once approved, the rehabilitation process has several key features. First, a stay arises to prevent creditors from taking legal or certain enforcement action. Second, the debtor is generally prohibited from disposing of its assets except in the ordinary course of business or making debt payments after the proceedings have commenced. Third, a rehabilitation receiver is appointed. Fourth, taxes and fees due to the national and local government are waived. Finally, the process entails preparing, recommending and implementing a court-approved rehabilitation plan.

In addition to the formal processes above, consensual out-of-court workouts are also possible, where a distressed debtor may negotiate any restructuring terms with its creditors.

2) Who can initiate the process and how can such requests be submitted?

The company, by a majority vote of the board of directors or trustees, and the approval [i] of shareholders holding at least two-thirds of its outstanding capital stock, in the case of a stock corporation; or [ii] of at least two-thirds of the members, in the case of a non-stock corporation, or any creditor of the company with a claim or with the aggregate claims of at least Php 1 million or at least 25% of the subscribed capital stock or partners' contributions (whichever is higher), can initiate rehabilitation proceedings by filing a petition before the court.

3) What criteria will the court consider when hearing a restructuring petition?

When hearing rehabilitation proceedings, the court will consider whether [i] there is a substantial likelihood of successful rehabilitation, [ii] the debtor is insolvent, [iii] the petition is a sham intended solely to delay enforcement action by creditors, [iv] the petition, the rehabilitation plan and their attachments are materially false or misleading, and [v] the debtor has made misrepresentations to or defrauded its creditors.

4) Is shareholder approval required before the process can be initiated?

For debtor-initiated rehabilitation proceedings, approval of shareholders holding at least two-thirds of the debtor's outstanding capital stock is required before rehabilitation proceedings can be initiated.

5) Must the debtor be insolvent before the process can be initiated?

A debtor must be insolvent before the rehabilitation process can be initiated. This arises when a debtor is financially incapable to pay its liabilities as they fall due in the ordinary course of business or a debtor's liabilities are more than its assets

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management remains in control of the company during the rehabilitation process.

However, upon any interested party's motion, the rehabilitation receiver or an appointed management committee may take control of the debtor's management. Grounds for such motion are the actual or imminent danger to or dissipation of the debtor's assets, paralysis of the debtor's business operations, or gross mismanagement, fraud or other wrongful conduct by the debtor's existing management or related persons.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, a debtor can continue to carry on business during restructuring proceedings.

The debtor's assets may be disposed of in the ordinary course of business or for financing the administrative expenses of the rehabilitation proceedings, but the rehabilitation receiver must seek the court's approval to dispose of unencumbered assets outside the ordinary course of business. Grounds for such disposal include the property being perishable, costly to maintain, susceptible to devaluation or jeopardised.

The court, however, may rescind or declare as null and void any sale, transfer or conveyance of the debtor's property not made in the ordinary course of business, or any transaction executed with intent to defraud a creditor or which constitutes undue preference of creditors, subject to certain conditions.

Further, where the debtor's property or money is paid, transferred or disbursed in fraud of the debtor or its creditors, the rehabilitation receiver may sue for recovery with the approval of the court.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

After the court finds the petition sufficient, it will issue a commencement order, which shall include a stay or suspension order, effective until the termination of the rehabilitation proceedings.

This stay or suspension order prevents creditors from commencing or continuing legal proceedings, enforcing security or taking enforcement actions against the debtor. However, the stay or suspension order does not apply in certain scenarios, such as cases already pending appeal in the Supreme Court as of the commencement date of the rehabilitation proceedings, cases pending with a specialised court or quasi-judicial agency which is capable of resolving the claim more quickly, fairly and efficiently than the court under certain conditions, enforcement actions taken against sureties and other persons solidarily liable with the debtor which does not interfere with the debtor's rehabilitation, as well as certain securities or criminal action taken against individuals related to the debtor.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

Parties acting in breach of a stay or suspension order may be held in indirect contempt of court.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

During the rehabilitation proceedings, there is a prohibition on the debtor's suppliers of goods or services withholding the supply of goods and services in the ordinary course of business, so long as the debtor makes payments for the services or goods supplied after the issuance of the commencement order. However, this prohibition does not apply to contracts which may be terminated on grounds provided by law, such as contracts not confirmed by the debtor within 90 days following the commencement of proceedings.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, such financing is possible during the rehabilitation proceedings through post-commencement loans and obligations aimed at enhancing the prospects of rehabilitation.

A debtor may obtain rescue financing upon the rehabilitation receiver's recommendation and with the court's approval. Such financing can be secured against the debtor's assets as part of the process and there are several levels of priority in the debtor's insolvency that are or can be granted to such financing. First, rescue financing debt can be treated as a new credit arrangement but excludes restructured obligations. Second, the debt may be secured by a new mortgage on a debtor's unencumbered assets. Third, the debt may also be secured by a secondary mortgage on a debtor's encumbered assets provided it is

approved by the existing senior security holder. Fourth, the costs to be incurred in rescue financing debt are considered administrative expenses.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

At minimum, the rehabilitation plan should contain, among others, the following information: first, the underlying assumptions, financial goals, and the procedures proposed to accomplish such goals; second, a comparison of the amounts expected to be received by creditors under the rehabilitation plan vis-à-vis those they are expected to receive pursuant to the liquidation of the debtor; and third, information sufficient to give the creditors a reasonable basis for determining whether supporting the rehabilitation plan is in their financial interest in comparison with the immediate liquidation of the debtor. The creditor should, when provided with this information, reasonably be able to assess the feasibility of the debtor's rehabilitation.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

Any creditor may organise a creditors' meeting for general purposes. If the purpose of the meeting is to vote on the approval of the rehabilitation plan, the rehabilitation receiver should convene the creditors' meeting and exercise its discretion to place creditors into separate classes based on the nature of their debts.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

When creditors vote on a rehabilitation plan, they are placed into separate classes based on the nature of their debts. The plan will pass if creditors representing more than 50% of the total claims of each class of creditors whose rights are adversely modified or affected by the plan, vote in favour of the plan.

In the event that a class of creditors vote against the plan, these dissenting creditors may still be bound by the plan. If the plan is rejected at a creditor's meeting, the court may still confirm the plan on its own or upon any interested party's motion within 10 days from notice of rejection, and the confirmed plan will bind minority dissenting creditors and other creditors who did not participate in the proceedings. The court can only confirm the plan if it is compliant with regulatory requirements, the rehabilitation receiver recommends such confirmation, the debtor's shareholders, owners or partners lose at least their controlling interest as a result of the plan, and the plan would likely provide the dissenting class of creditors with compensation which has a net present value greater than that which they would have received in the debtor's liquidation.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a rehabilitation plan, with the consent of the secured creditors and the approval of the court.

16) Is a debt-equity swap possible as part of the restructuring?

This is possible as part of a rehabilitation plan, if advisable or necessary to restore the debtor's financial well-being and viability and so long as the plan is approved by the requisite stakeholders and the court.

Shareholder approval may be required for the issuance of new shares and in conducting the valuation of the indebtedness for issuing shares, regulatory approval is required.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Yes. If the secured creditors consent to and the rehabilitation receiver applies to court for the disposal of the debtor's encumbered assets, the court may authorise such disposal if it determines that it is necessary for the continued operation of the debtor's business and the debtor has made arrangements to provide the secured creditors with a substitute lien or ownership right that provides an equal level of security.

18) Can the restructuring plan provide for the release of third-party claims?

Yes. Such release is subject to the rehabilitation plan's terms, which may specify for the release provided that it will be consistent with the objective of restoring the debtor's financial well-being and viability.

19) Is the process subject to a time limit?

There is no specified time limit for the entire process. However, a rehabilitation plan must be confirmed by the court within 1 year from the filing of the rehabilitation petition, otherwise the rehabilitation proceedings will be converted into a liquidation.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, the rehabilitation proceedings may be terminated by the court upon motion by any stakeholder or the rehabilitation receiver that the rehabilitation has failed. This is the case if for instance there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period or if the debtor does not comply with the plan's terms. If the rehabilitation fails on non-technical grounds (such as when the debtor fails to perform its obligations under the rehabilitation plan, or fails to realise the objectives, targets, or goals in the rehabilitation plan), and the proceedings are terminated, there is an automatic conversion of the rehabilitation process into liquidation.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

Yes. Foreign debtors may avail themselves of the rehabilitation proceedings in the Philippines and the remedies provided under regulations when [i] assistance is sought in a Philippine court by a foreign

court or a foreign representative in connection with a foreign proceeding, [ii] where assistance is sought in a foreign state in connection with a proceeding governed by Philippine regulations, [iii] where a foreign proceeding and a proceeding governed by Philippine regulations are concurrently taking place, or [iv] where creditors in a foreign state have an interest in requesting the commencement of, or participating in, a proceeding under Philippine regulations.

22) Will the restructuring proceedings be recognised in other jurisdictions?

This would depend on recognition principles under the specific jurisdiction's laws, although the Philippines has adopted the UNCITRAL Model Law on Cross-Border Insolvency. Additionally, a rehabilitation receiver is authorised under Philippine law to act in a foreign state on behalf of a Philippine proceeding to the extent allowed under the specific jurisdiction's laws.

23) Can foreign restructuring proceedings be recognised in the Philippines? Does the Philippines recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

A foreign representative can file a petition for the recognition of a foreign restructuring proceeding in which he has been appointed, including for urgent provisional relief like a moratorium. Upon recognition, the foreign representative can participate in a restructuring proceeding regarding the debtor filed under Philippine law, and the courts may extend additional relief like a stay or suspension on enforcing security or commencing legal proceedings against the debtor or any other relief that may be available to the rehabilitation receiver under Philippine law.

In determining whether to recognise a foreign proceeding, the Philippine court will consider various factors such as whether other jurisdictions have given recognition to the proceeding, the extent that the proceeding recognises creditors' rights in a manner substantially in accordance with that under Philippine law or the extent that the proceeding has recognised proceedings under Philippine law.

24) Have there been any recent developments in the Philippines, or any unique considerations relating to the Philippines?

No significant developments in recent times.

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SINGAPORE

7. SINGAPORE

1) What are the main debt restructuring processes in Singapore?

The main formal restructuring processes in Singapore are schemes of arrangement and judicial management.

A scheme of arrangement is a binding, court-sanctioned compromise or arrangement entered into by a company with its creditors, primarily intended to help a company in financial distress address its debt obligations and return to normal operations.

The scheme process generally involves two key stages. First, the company proposing the scheme must apply to court for leave to convene a creditors' or members' meeting to consider and, if thought fit, approve the scheme. Second, if at the meeting, a majority in number representing 75% in value of the creditors' or members' claims vote in favour of the proposed scheme, the company can apply to court for approval of the scheme, and if granted and properly filed, the scheme becomes effective and binding on all parties.

Judicial management involves the appointment of a judicial manager to take over a distressed company, aiming to save the company as a going concern, implement a scheme or achieve a better asset realisation than through liquidation.

In addition to the formal processes above, consensual out-of-court workouts are also common, where a company restructures its debt obligations by entering into formal agreements with all relevant parties.

2) Who can initiate the process and how can such requests be submitted?

The company or any creditor of the company can initiate a scheme of arrangement or judicial management by applying to the court. Judicial management can also be initiated by the company obtaining a creditors' resolution to enter judicial management.

3) What criteria will the court consider when hearing a restructuring petition?

For a scheme of arrangement, the court may consider whether there are realistic prospects of the proposed scheme being approved, and whether the company's creditors or members are classified in such a manner that, if leave is granted to hold the relevant meeting, the creditors or members may sensibly consult together with a view to their common interests.

For judicial management, the court must be satisfied that the company is or is likely to be unable to pay its debts. If so, the court will consider if the appointment of a judicial manager is likely to achieve any of the aims of judicial management, which include the survival of a company and the whole or part of its business as a going concern, the approval of a scheme of arrangement, or a more advantageous realisation of the

company's assets than on a winding up. The court may also consider creditors' objections against judicial management and whether judicial management is more appropriate than alternative restructuring solutions.

The scheme and judicial management processes may not be available to certain regulated entities, such as banks and insurers.

4) Is shareholder approval required before the process can be initiated?

Shareholder approval is generally not required.

5) Must the debtor be insolvent before the process can be initiated?

A debtor need not be insolvent before the scheme of arrangement process can be initiated.

For judicial management, however, a company must be or be likely to become unable to pay its debts before it can be placed in judicial management.

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management remains in control of the company during the scheme of arrangement process.

However, where a debtor has entered judicial management, the judicial manager takes control of the debtor's management.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, a debtor can continue to carry on business during restructuring proceedings.

However, the debtor cannot conduct business with intent to defraud creditors (fraudulent trading) and if the debtor is insolvent or close to insolvency, it cannot continue to incur liabilities without a reasonable prospect of repaying them in full (wrongful trading). Persons who know or should have known their involvement in fraudulent or wrongful trading may incur civil and criminal liability, although for wrongful trading, the court may relieve such person from civil liability if he acted honestly and ought fairly to be relieved.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

A debtor intending to propose a scheme to its creditors may apply to court for a moratorium. Upon applying, an automatic moratorium remains until the earlier of 30 days from the date of the application or the date on which the application is decided by the court.

A debtor that has applied for judicial management may also benefit from an automatic moratorium. This may arise when a court application for judicial management has been made, or where creditors intend to pass a resolution for the debtor's judicial management, when a notice of the appointment of an interim judicial manager is filed. The automatic moratorium remains until the court decides on the judicial management application, or if the company has filed a notice for interim judicial management, the earliest of the judicial manager's appointment, the end of the interim judicial manager's term and the rejection of the judicial management resolution.

Moratoriums granted pursuant to a scheme of arrangement or judicial management application prevent creditors from attempting to wind up, commence or continue certain proceedings or take certain enforcement actions against the debtor, although creditors may continue to exercise their right of set-off and netting. However, a moratorium granted pursuant to a scheme of arrangement may have extraterritorial effect, in that the court can extend a moratorium to restrain actions outside Singapore if the party involved is within Singapore or under its jurisdiction, or if a foreign debtor has a substantial connection to Singapore. In contrast, a moratorium granted pursuant to judicial management has no extraterritorial effect.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

Parties acting in breach of a moratorium or automatic stay may be held in contempt of court.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

Yes. While a debtor company is undergoing restructuring proceedings, there is a general prohibition on terminating contracts with that debtor by reason only that restructuring proceedings have commenced, or that the company is insolvent. However, this prohibition does not apply to specific types of contracts, for example derivatives agreements, securities borrowing and lending agreements, or margin loans.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, if such financing is necessary for the debtor's survival as a going concern or to achieve a more advantageous realisation of its assets than on a winding up.

The court may allow rescue financing to be secured against the debtor's assets as part of the process and there are several levels of priority in the debtor's insolvency that the court can grant to such financing. First, the court may order that rescue financing debt be treated as if it were liquidation expense. Second, the court may elevate the debt in priority over all preferential and other unsecured debts. Third, the debt may be secured by a new security on a debtor's assets, or a subordinate security on a debtor's assets that are already subject to an existing security.

Fourth, the debt may also be secured by a security of the same or higher priority than an existing security provided the existing security holder is adequately protected.

The court will closely scrutinise applications for rescue financing since this may prejudice existing creditors. Accordingly, the court has to be satisfied that it would not be otherwise possible for the company to obtain rescue financing without the offer of priority, and in the case of granting the same or higher priority over an existing security interest, the court must be satisfied that the interests of pre-existing secured lenders are adequately protected.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

For a scheme of arrangement, disclosure requirements differ depending on the stage of the process. For a moratorium application, the applicant must provide the court with sufficient financial information to assess the scheme's feasibility. Such information could include a valuation report on significant assets or cash flow and profitability forecasts. For approval to convene a creditor meeting, a debtor must fully disclose all material information, including financial disclosures, necessary for the court to determine how the meeting should be conducted. Finally, for sanction of a scheme, a debtor must provide sufficient information by the time of the meeting to enable creditors to meaningfully exercise their voting rights. Alternatively, if a debtor intends to propose a pre-packed scheme (in other words, where a debtor presents a pre-negotiated scheme to court for approval), the court will only approve such a scheme if it is satisfied that each creditor has been provided with the necessary information, such as details about the debtor's property, business activities, financial condition, prospects and any other information to make an informed decision about such a scheme.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The company or any creditor may organise a creditors' meeting at which a scheme of arrangement will be proposed, although this is subject to the court's discretion.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

When creditors vote on a scheme of arrangement, they are placed into separate classes based on the nature of their debts. The scheme will pass if a majority in number representing at least 75% in value of each class of creditors votes in favour of the scheme.

In the event that a class of creditors vote against the scheme, these dissenting creditors may still be bound by the plan. The court may "cram down" minority dissenting creditors if a majority in number representing at least 75% in value of all creditors present and voting at the meeting approves the scheme, and the court is satisfied that the scheme does not

discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a scheme of arrangement, as long as the scheme is approved by the requisite majority of stakeholders and the court.

16) Is a debt-equity swap possible as part of the restructuring?

This is possible, but shareholder approval may be required for the issuance of new shares.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

Yes. Such sale is subject to the scheme of arrangement's terms, which may specify that a security holder releases its security over the debtor's assets for a sale.

A judicial manager can dispose of the debtor's assets secured by a floating charge as if they were unencumbered. The floating charge holder retains priority over any proceeds as if the proceeds were subject to a floating charge. However, court approval is required for disposal of assets that are subject to any security other than a floating charge.

18) Can the restructuring plan provide for the release of third-party claims?

Yes, the Singapore courts have held that a scheme of arrangement can incorporate an express term to the effect that upon the company duly performing its obligations under such a scheme, the creditors will release the guarantors who are not parties to such scheme from their obligations under their respective guarantees.

19) Is the process subject to a time limit?

Time limits are imposed by the scheme of arrangement's terms. If time limits expire and relevant stakeholders do not agree to any extension, the scheme may fail.

Judicial management generally lasts for 180 days from the date of the relevant court order or creditors' resolution, regardless of whether the judicial management purposes have been achieved. A judicial manager may apply for a court order or obtain a creditors' resolution (whichever applicable) extending his appointment, but the latter can be challenged in court by any dissatisfied creditor.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, a scheme of arrangement may be terminated if the debtor does not comply with the scheme's terms, or all parties involved agree to

termination. There is no automatic conversion of the scheme process into liquidation, although this is possible as creditors may apply to wind up the debtor once a moratorium expires.

Likewise, there is no automatic conversion of judicial management into a winding up process, although the judicial manager may apply to wind up the debtor if the judicial management purposes cannot be achieved.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

Yes, if such debtors have a substantial connection with Singapore. In determining this, the Singapore courts will consider, amongst other factors, whether the debtor has its centre of main interests in Singapore, whether the debtor has substantial assets in Singapore and whether the debtor has submitted to the Singapore courts' jurisdiction for resolving disputes relating to a loan or other transaction.

22) Will the restructuring proceedings be recognised in other jurisdictions?

This would depend on recognition principles under the specific jurisdiction's laws. Singapore-sanctioned schemes and moratoriums may be and have been recognised in jurisdictions that have adopted the UNCITRAL Model Law on Cross-Border Insolvency. Singapore-appointed judicial managers have also been recognised in the People's Republic of China.

23) Can foreign restructuring proceedings be recognised in Singapore? Does Singapore recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

A foreign restructuring representative can apply to the Singapore court for the recognition and assistance of a foreign restructuring proceeding in which he has been appointed, including for urgent provisional relief like a moratorium. Upon recognition, the foreign representative can participate in a restructuring proceeding regarding the debtor and intervene in any proceedings in which the debtor is a party.

Unless contrary to Singapore's public policy, the Singapore court must recognise a proceeding if it is a foreign proceeding, the person applying for recognition is a foreign representative, the application complies with statutory documentary requirements and has been submitted to the Singapore High Court. If the proceeding is recognised as a "foreign main proceeding" (in other words, a foreign proceeding in the country where the debtor has its centre of main interests), a mandatory stay applies and the court may at the foreign representative's request grant additional relief to him, including powers to realise and distribute the debtor's property in Singapore. If the proceeding is recognised as a "foreign non-main proceeding", the foreign representative may request that the court grant a stay or any other additional relief available to him.

For example, the Singapore International Commercial Court has recognised an Indonesian restructuring proceeding and granted relief that included enforcement of an Indonesian court-approved restructuring plan.

24) Have there been any recent developments in Singapore, or any unique considerations relating to Singapore?

Singapore recently introduced a “Simplified Debt Restructuring Programme”. The programme provides a simpler, faster and lower cost restructuring process for small companies that meet certain criteria, for instance companies that have 30 or fewer employees, or maximum liabilities of S\$2 million.

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THAILAND

8. THAILAND

1) What are the main debt restructuring processes in Thailand?

The main debt restructuring process in Thailand is the business rehabilitation proceedings. After a petitioner files a business rehabilitation petition with the court and the court accepts the petition for consideration, an automatic moratorium arises and the court will schedule hearings to review the petition and any creditors' objections. A plan preparer may also be appointed and such appointment will be publicised.

Creditors can file a debt repayment application with the official receiver, and the official receiver will consider and issue an order approving or rejecting the debt repayment application. Subsequently, the plan preparer will prepare and submit a business rehabilitation plan to the official receiver, who will call for a creditors' meeting to consider the plan. If the creditors approve the plan, the court must sanction the plan and appoint a plan administrator before the plan can be implemented.

2) Who can initiate the process and how can such requests be submitted?

A debtor, creditor or relevant government authorities like the Bank of Thailand can initiate the process by submitting a petition to the court.

3) What criteria will the court consider when hearing a restructuring petition?

When hearing a business rehabilitation petition, the court will consider whether the debtor is insolvent or unable to repay debt of at least THB 10 million if the debtor is a company or debt under THB 10 million but amounting to at least THB 2 million if the debtor is a small or medium-sized enterprise. The court will also consider whether the debt is determinable and assess the likelihood of successful business rehabilitation.

4) Is shareholder approval required before the process can be initiated?

This would depend on regulations applicable to the specific debtor. It would be prudent to obtain shareholder approval since business rehabilitation is a matter of significant relevance for most companies.

5) Must the debtor be insolvent before the process can be initiated?

The debtor must be insolvent or unable to pay its debts within the specified period before the process can be initiated, for debt amounting to not less than THB 10 million for the corporate debtor or at least THB 2 million but less than 10 million for the small or medium-sized enterprise debtor. In determining if the debtor has more debts than assets such that it is insolvent, the court will generally consider the debtor's audited yearly financial statements.

6) Does the debtor's management remain in control of the company during the restructuring process?

A debtor's management can remain in control of the company during the business rehabilitation process, if the creditors and the court approve the appointment of the debtor's management as the plan preparer or the plan administrator. Otherwise, it is the plan preparer or the plan administrator who takes control of the company during the business rehabilitation process.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, subject to the automatic stay and terms of the rehabilitation plan, a debtor can continue to carry on normal business during restructuring proceedings, including corporate trading, entering into contracts or repaying debts (under the conditions discussed in the next paragraph). That said, the right to continue operations may not be contrary to Thai laws.

However, a debtor cannot make any disposal, distribution, transfer or repayment of debt, create debts, or perform any action having the effect of creating debt over the debtor's property, except as necessary for the continuance of normal operation of the debtor's business or unless the court permits. Furthermore, the debtor shall not operate its business and conceal property or deceitfully take any other actions in order to obstruct creditors from receiving rightful payments.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

Yes. An automatic stay arises immediately after the court accepts the business rehabilitation petition and remains until the plan's implementation period expires, until the plan is successfully completed or until the court dismisses the petition, strikes out the case, cancels the business rehabilitation or issues an absolute receivership order against the debtor.

The automatic stay prevents a debtor from repaying debts to creditors generally, entering into contracts or having legal processes such as civil claims, bankruptcy cases or judgment executions initiated or enforced against it.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

Yes. Any repayment of a debt or entry into a contract that violates the automatic stay is void. Parties acting in breach of the stay may also face criminal liability.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

No.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

While the automatic stay is in place, a debtor may seek financing from a financial institution, creditor or sponsor for business rehabilitation purposes if the court so approves.

Although the law is silent on whether a security interest can be granted over the debtor's assets as part of the business rehabilitation process, it should be possible if court approval is obtained.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

The law does not specify disclosure requirements for creditors; however, there is a requirement for debtors to disclose to a plan preparer appointed by the court. In addition, the debtor must act in "good faith". The law does not expressly state the meaning of "good faith"; however, the court has dismissed business rehabilitation cases due to the bad faith of the petitioner. Therefore, the debtor should act in good faith by, for example, disclosing its entire assets and debts to the official receiver and the creditors' meeting, as well as specifying its strategy for the business rehabilitation that is reasonable and has prospects of success for business rehabilitation.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The official receiver has the authority to organise a creditors' meeting.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

A business rehabilitation plan will pass if a majority representing at least two-thirds in value of the total debts owed to creditors attending the meeting votes in favour of the plan. Alternatively, the plan will also pass if a majority of at least one creditor group representing minimally two-thirds of the total debts owed to creditors attending the meeting votes in favour of the plan, and the total debts owed to all creditors approving the plan represent at least 50% in value of the total debts owed to creditors attending the meeting. In the event that any creditor votes against the plan, this dissenting creditor will still be bound by the plan if the plan is approved by the requisite stakeholders and the court.

15) Can the restructuring plan modify secured claims?

The business rehabilitation plan cannot modify secured claims, although an automatic stay that is in place may prevent secured creditors from taking enforcement action.

16) Is a debt-equity swap possible as part of the restructuring?

This is possible as part of the business rehabilitation plan.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

A debtor may not unilaterally dispose of assets, whether encumbered or non-encumbered, as part of an ongoing restructuring. However, such disposal may be allowed upon the debtor's request to the competent Bankruptcy Court, which creditors have the right to object to. The court would allow such disposal under the condition that the disposal, distribution, or transfer of assets is an action necessary for the continuance of normal operation of the debtor's business.

If the asset is security to a mortgagee that is a secured creditor, the debtor shall petition the court to request approval for the sale of such asset. In such petition, the debtor must show the court that the debtor has afforded sufficient protection to the rights of secured creditors, i.e., payments have been made to secured creditors in an amount equivalent to the reduction of value of the property given as security, or payments have been made to secured creditors in compensation for the original security in an amount equivalent to the reduction of value of the property given as security, or any other action has been taken to which secured creditors have given consent. Exceptionally, the court would allow such sale in cases where the creditor has waived the right to enforce the secured property and has filed a debt repayment application as an ordinary creditor (unsecured debt).

18) Can the restructuring plan provide for the release of third-party claims?

The liabilities of the debtor's partner, joint debtor or any guarantor which existed before the court approved a business rehabilitation plan will not be released by that plan.

19) Is the process subject to a time limit?

The business rehabilitation plan must be implemented within the timeframe set out in the plan approved by the court. Such timeframe cannot exceed 5 years but debtors who need more time may request for extensions of up to 1 year each time.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, a business rehabilitation process can be terminated before the completion of the approved rehabilitation plan under certain conditions.

First, the court may dismiss the petition on grounds like there being no chance of successful rehabilitation. Second, the court may cancel the order approving the rehabilitation, for instance, if the creditors' meeting fails to appoint a plan preparer or if the court disagrees with the plan preparer's appointment at such meeting. In such cases, the relevant parties' rights revert to their status before the court approval and the debtor's management regains power over the business. Third, the court may issue an absolute receivership order before the completion of the approved plan, if the plan administrator vacates office and is not replaced after two creditors' meetings. In such cases, prior actions conducted in good faith and in accordance with the plan would not be affected. Finally, the court may issue a disposal order on grounds like the petitioner abandoning or withdrawing the petition after it has been accepted for consideration.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

The law is silent in this regard. However, a debtor incorporated in a foreign jurisdiction may be able to use the business rehabilitation process if it has a business entity and assets in Thailand.

22) Will the restructuring proceedings be recognised in other jurisdictions?

This would depend on recognition principles under the specific jurisdiction's laws.

23) Can foreign restructuring proceedings be recognised in Thailand? Does Thailand recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

No. Foreign restructuring proceedings and rehabilitation representatives and office-holders are not recognised in Thailand.

24) Have there been any recent developments in Thailand, or any unique considerations relating to Thailand?

No significant developments in recent times.

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An aerial photograph of a city skyline, likely in Vietnam, featuring a large river and numerous high-rise buildings. The image is overlaid with a semi-transparent blue filter. The word "VIETNAM" is prominently displayed in the center in a white, serif font. The background shows a dense urban landscape with a mix of modern skyscrapers and older buildings, situated along a wide river. A large, dark, rectangular building is prominent in the foreground on the left. The river flows through the city, with several boats visible. In the distance, more skyscrapers are visible against a hazy sky.

VIETNAM

THE VIEN

9. VIETNAM

1) What are the main debt restructuring processes in Vietnam?

The main debt restructuring processes in Vietnam are formal insolvency proceedings and informal out-of-court restructurings.

Formal insolvency proceedings involve filing for bankruptcy when a debtor's obligations remain outstanding for at least 3 months. This process may culminate in the implementation of a recovery plan if approved by creditors and the court, or a bankruptcy declaration.

Alternatively, if a debtor's obligations remain outstanding for less than 3 months, the debtor is not yet considered insolvent and may consider informal debt restructuring. This can involve negotiating modifications to debt terms, payment deadline extensions or debt-to-equity swaps. In practice, informal debt restructuring can also be used if the debtor's obligations remain outstanding for more than 3 months but formal bankruptcy proceedings are not pursued.

Vietnam has specialised laws that may dictate different restructuring rules for entities like credit institutions or insurance companies, and specialised regulators who may require these entities to implement certain plans, including a restructuring plan, before initiating bankruptcy proceedings.

2) Who can initiate the process and how can such requests be submitted?

When the debtor is insolvent, the debtor's owners and certain key personnel such as legal representatives and the chairperson of the board of directors, are obligated to initiate bankruptcy proceedings, while other parties such as employees, shareholders holding at least 20% of the common shares for at least 6 months or creditors are also entitled to initiate the process. These parties may do so by submitting an application dossier to the court.

3) What criteria will the court consider when hearing a restructuring petition?

The formal restructuring process is mainly determined by the creditors rather than the court.

First, creditors must agree to the company's restructuring. In determining this, creditors will consider factors such as the company's business situation, financial status, list of creditors and the nature of any proposed recovery plans.

If creditors agree to the company's restructuring, the company must prepare a business recovery plan specifying, among others, debt repayment terms and the specific recovery measures to be undertaken such as any debt moratorium or reorganisation. This must be presented

to the court for approval, and the court will consider if this should be placed before the creditors at a creditors' meeting for their subsequent approval. Since the law does not clearly stipulate criteria for determining the eligibility of the recovery plan before presentation at the creditors' meeting, the court will have broad discretion on determination and in practice, may consider various aspects such as the plan's feasibility, the fairness of creditor treatment, and legal compliance.

4) Is shareholder approval required before the process can be initiated?

Shareholder approval is generally not required.

5) Must the debtor be insolvent before the process can be initiated?

Yes, the debtor must be insolvent before the process can be initiated. A debtor is insolvent if it has failed to fulfill debt payment obligations within 3 months from the payment due date.

6) Does the debtor's management remain in control of the company during the restructuring process?

Yes, subject to different restrictions depending on the stage of the restructuring process.

The debtor's management remains in control during the period after the commencement of bankruptcy proceedings, but before the court recognises any business recovery plan that has been approved by creditors. However, the debtor's management is restricted during this period and cannot do certain things such as disposal of its assets, paying certain unsecured debts or waiving debts owed to the company. The debtor's management is also subject to certain reporting requirements, where it must report to a liquidator or asset management company before engaging in activities like borrowing or guaranteeing loans. The liquidator or asset management company is generally required to take on a supervisory role during the bankruptcy proceedings.

Once the business recovery plan has been approved by creditors, the debtor's management is no longer restricted and can operate the company to implement the recovery plan under various stakeholders' supervision. However, the debtor's management is still subject to certain reporting requirements, where it must report biannually to a liquidator or asset management company on the plan's implementation.

7) Can a debtor continue to carry on business during restructuring proceedings?

Yes, a debtor can continue to carry on business during restructuring proceedings under various stakeholders' supervision and within certain limits.

However, if the debtor transfers assets at below market value, creates security over existing debts, makes certain payments favouring a

specific creditor, gifts or disposes of its assets or transacts outside its scope of business, at any time within 6 months before the court's decision on the commencement of bankruptcy proceedings, these transactions may be void. If the debtor enters into such transactions with related parties (such as the parent company or related individuals) at any time within 18 months before the court's decision on the commencement of bankruptcy proceedings, these may also be void.

8) Is there a moratorium or an automatic stay on enforcing security or commencing legal proceedings against the debtor?

Yes. A stay on enforcement of security against the debtor arises within 5 working days of the court's decision on the commencement of bankruptcy proceedings, unless the secured asset is at risk of significant damage or devaluation.

9) Is there any civil or criminal liability imposed for violation of the moratorium or automatic stay (if any)?

No.

10) Is there a prohibition on terminating contracts with the debtor while the restructuring is ongoing?

No, although the contracting parties must still comply with termination provisions in the relevant contracts.

11) Is rescue financing possible? Can a security interest be granted over the debtor's assets as part of the process?

Yes, if such financing or granting of security is part of the debtor's business recovery plan approved by the requisite stakeholders and the court.

12) What are the disclosure requirements (if any) for creditors in a restructuring proceeding?

Creditors are entitled to receive information relating to the restructuring proceeding. This may include, for the purpose of deciding at a creditors' meeting, information on the company's finances, business situation and proposed business recovery plan. If the business recovery plan is implemented, the liquidator or asset management company must provide updates on the progress of the business recovery plan to creditors every 6 months.

13) Who has the authority to organise a creditors' meeting (if any), and what are the related requirements?

The judge has the right to convene a creditors' meeting which must be attended by the debtor's owner or legal representatives, the liquidator or asset management company, and minimally 51% of the total unsecured creditors.

14) What is the voting threshold for a restructuring plan to pass? Will minority dissenting creditors be bound by the plan?

A business restructuring plan will pass if a majority of unsecured creditors representing at least 65% in value of the total unsecured debt votes in favour of the plan. If the business restructuring plan contains the use of secured assets, the business restructuring plan must specify the period of use of such secured assets and a plan for realisation of such secured assets and these contents must be agreed upon by the relevant secured creditors.

15) Can the restructuring plan modify secured claims?

Secured claims may be modified by the terms of a business recovery plan, as long as the business recovery plan is approved by the requisite stakeholders and the court.

16) Is a debt-equity swap possible as part of the restructuring?

This is possible if expressly stated in a business recovery plan approved by the requisite stakeholders and the court.

17) Can the debtor's assets be sold free of encumbrances as part of the restructuring?

This is possible if expressly stated in a business recovery plan approved by the requisite stakeholders and the court.

18) Can the restructuring plan provide for the release of third-party claims?

This is possible if expressly stated in a business recovery plan approved by the requisite stakeholders and the court.

19) Is the process subject to a time limit?

Yes, the time limit will be provided in the approved business recovery plan. If not, the time limit will be 3 years from the date the creditors' meeting approves the business recovery plan.

20) Can the restructuring process be terminated before the completion of the approved restructuring plan?

Yes, a business recovery plan may be terminated by the court anytime if the debtor fails to implement the plan's terms, in which case there is an automatic conversion of the plan into a bankruptcy declaration.

21) Can debtors incorporated in a foreign jurisdiction use the restructuring processes?

No, the process is not available to debtors incorporated in a foreign jurisdiction.

22) Will the restructuring proceedings be recognised in other jurisdictions?

This would depend on recognition principles under the specific jurisdiction's laws.

23) Can foreign restructuring proceedings be recognised in Vietnam? Does Vietnam recognise foreign restructuring representatives and/or office-holders and what assistance is available to such persons from the domestic courts?

Foreign court decisions relating to bankruptcy proceedings may be recognised and enforced in Vietnam if made from a country that has entered into judicial assistance agreements to which Vietnam is a party, or according to relevant judicial assistance provisions. Currently, Vietnam is a party to 17 judicial assistance agreements or treaties with 9 European countries (Russia, Ukraine, Poland, Belarus, Bulgaria, Hungary, the Czech Republic, Slovakia, France), 6 Asian countries and 1 territory (Laos, Cambodia, China, Kazakhstan, Mongolia, North Korea, Taiwan), 1 African country (Algeria) and 1 American country (Cuba).

24) Have there been any recent developments in Vietnam, or any unique considerations relating to Vietnam?

Vietnamese law has introduced simplified procedures for companies that are clearly unable to recover. These may be available upon request and reduce time and costs expended in the bankruptcy process.

Employee protection is another focus under Vietnamese law. Employees and trade unions may file petitions initiating bankruptcy proceedings if their wages remain unpaid for at least 3 months and the payment of employees' wages is given priority in the distribution of the debtor's assets in insolvency.

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