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CORPORATE INSOLVENCY REGIME IN THE ASEAN REGION:

FOCUS ON INDONESIA

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Series 3

Question No.1	What is the primary legislation which governs corporate insolvency? And, are there any other laws in force dealing with corporate insolvency?

Corporate insolvency is primary governed under Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations ("**Bankruptcy Law**").

Question No. 2	Is there any conflict of provisions in the corporate insolvency laws?

Law No. 40 of 2007 on Limited Liability Companies also mentions bankruptcy, mainly regulating the impact of the bankruptcy process on companies and management organs (board of directors, board of commissioners and general meeting of shareholders), meanwhile Law No. 40 of 2014 on Insurance has a few articles on bankruptcy related to insurance and reinsurance companies. Law No. 13 of 2003 on Employment briefly regulates the rights of the employees in regard to the bankruptcy process. There are no conflicting provisions between the laws as the Law No. 40 of 2007 on Limited Liability Companies, Law No. 40 of 2014 on Insurance, and Law No. 13 of 2003 on Employment refer to Bankruptcy Law on the mechanism of bankruptcy process.

Question No. 3	Who can initiate a corporate rehabilitation proceeding under the insolvency laws?

Corporate insolvency proceedings may be initiated by the following:

a. the company itself, pursuant to a resolution passed by the shareholders through a General Meeting of Shareholders;
b. 1 (one) or more creditor(s);
c. public prosecutors, for the purposes of protecting the public interest, being the nation, state interests and/or interests of the citizens;
d. Bank of Indonesia, if the company is in banking industry;
e. Financial Services Authority (*Otoritas Jasa Keuangan* or OJK), for security companies, the stock exchange, guarantee clearing institutions, a central security depository, insurance or reinsurance companies; and
f. Minister of Finance, for pension funds and state-owned enterprises.

The process is initiated by submitting the company's bankruptcy application to the Commercial Court. Upon examination of such an application, an examination hearing shall be conducted within 20 days from the date that the application is registered. In the event that the application is approved, the judges will issue a declaration of bankruptcy. Debt verification will be conducted and the appointed receivers will classify the creditors based on the nature of the debts. The company may propose composition plan for settlement to the creditors within eight days before the debt verification meeting with the creditors. If the composition plan is approved by the

creditors, then the court shall ratify it. If the company does not provide the composition plan; the composition plan is submitted but rejected by the creditors; or the composition plan is approved by the creditors but not ratified by the court, the company shall be declared insolvent.

Question No. 4	What are the rights of secured vs. unsecured creditors for corporate insolvency proceedings?

In general, the Bankruptcy Law applies the *paritas creditorium* principle that ensures equality treatment of the creditors. Notwithstanding this, secured creditors are prioritized.

Unsecured creditors will be paid in accordance with the *pari passu prorata parte* principle, whereby they will be paid proportionately in accordance with each debt from the debtor's entire remaining assets.

Question No. 5	When can a receiver/liquidator be appointed? And, who can appoint a receiver under the applicable laws?

In regard to a company's bankruptcy application, a judge will determine whether to approve the application. In the event of approval, the judge will issue a declaration of bankruptcy. The declaration of bankruptcy must also include an appointment of the receiver(s). The appointed receiver must be independent, be free of conflicts of interest in relation to the debtors or creditors, and not involved in more than three bankruptcy cases at the time.

There is no involvement by a liquidator in the bankruptcy process under Indonesian law. On the date of declaration of a company's bankruptcy, the company loses its power to manage its own assets and the business of the company is normally suspended. The appointed receiver(s) will manage the company's assets (and sometimes its business, if needed) and carry out the settlement of its debt to its creditors, until dissolution of the company is declared by the court. In other words, the 'liquidation' process for a company undergoing bankruptcy is also carried out by the receiver. A liquidator may only be involved in the dissolution of a company for reasons other than bankruptcy as stipulated in Law No. 40 of 2007 on Limited Liability Companies.

Question No. 6	What are the protections available to a company during the corporate insolvency proceeding?

The following protections are available to a company during insolvency proceedings:

- No transfer of shares or other changes to the company's articles of association may be affected without the consent of receiver;
- The company cannot be subject to penalties (dwangsom);

- Agreements to transfer land rights, boats, security rights, hypothecs or previously agreed to fiduciary rights cannot be enforced upon the declaration of bankruptcy;
- If the company does not have enough assets to settle all debts or is declared insolvent, the company may not be forced to settle its remaining debts after the bankruptcy proceedings are completed and duly dissolved;
- Regarding declarations of bankruptcy, the company may appeal (cassation) and seek a review of the court's decision from the Supreme Court.

Question No. 7	Does the law separately provide for the duties of directors and how does it pave with the existing laws?

The Bankruptcy Law does not separately provide for specific duties of company directors, rather, the powers of directors are restricted.

Question No. 8	Are there any restrictions on the power of directors with the onset of corporate insolvency?

The directors of the company cease to have the power to manage the company upon the declaration of the company's bankruptcy. The power is transferred to the court-appointed receiver, who has the legal authority to manage the assets during the bankruptcy proceedings.

Question No. 9	Is the any difference between financial credit and operational credit?

There is no specific provision to distinguish between financial credit and operational credit under the Bankruptcy Law.

Question No. 10	Is there a specific time-frame for the corporate insolvency or winding–up proceedings to be concluded under the applicable laws?

No, the Law does not provide a definitive timeframe for completion of the entire corporate insolvency or winding up proceedings of a company.

Question No. 11	Is the concept of a suspicion/suspension period recognized?

The receiver(s) may submit an appeal to set aside any action conducted by the company prior to its declaration of bankruptcy, on the condition that such action is considered as harmful to the creditors. The Bankruptcy Law specifically explains that the appeal can be submitted if the company and a third party had knowledge that such action would harm the creditors and is filed within one year prior to the declaration and:

a. the company's obligations far outweigh those of such a third party;
b. the debt is not yet due and payable; and
c. performed in the interests of the company's management board and their relatives, the majority shareholders and other related companies (relatives or companies controlled by relatives, insiders and legal entities belonging to the same group).

The appeal may be submitted as of the date of the company's declaration of bankruptcy.

By the time the declaration of bankruptcy is issued, the receiver(s) will manage the company's assets and then proceed to settle its debts with its creditors. In general, the receiver's duties may not include operation of the company's business. However, in certain conditions, the receiver may continue to carry out the company's business based on the receiver's or creditors' request and report this to the judge presiding over the matter.

Question No. 12	When does a corporate insolvency proceeding transition to a winding-up process?

The company's winding up takes place upon insolvency declaration that is due to:

- failure to provide composition plan;
- the composition plan is submitted, but is rejected by the creditors; or
- the composition plan is submitted and approved by the creditors, but is not ratified by the court.

Question No. 13	Is there a dedicated regulator and a dedicated court or tribunal for insolvency matters?

The Commercial Court is the competent authority to examine and decide bankruptcy matters.

Question No. 14	Does the law governing insolvency proceedings provide for personal insolvency and bankruptcy proceedings?

In general, the provisions under the Bankruptcy Law do not differentiate between individuals and corporations. Therefore, the provisions will apply to both, unless otherwise specifically regulated.

Question No. 15	Is the concept of transnational or cross-border insolvency recognized? And, are there separate provisions dealing with cross-border insolvency?
No, foreign court judgments in regard to insolvency matters are not recognized under the Bankruptcy Law. Such judgments will not affect the company's assets in Indonesia. Foreign creditors may submit a bankruptcy petition regarding the company to the relevant Indonesian Commercial Court as the Bankruptcy Law does not specifically distinguish between local and foreign creditors.	

KEY CONTACTS

If you have any questions or would like to know to more about the insolvency regime in Indonesia, please contact:

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