

CORPORATE INSOLVENCY REGIME IN THE ASEAN REGION: FOCUS ON MYANMAR, THAILAND & THE PHILIPPINES

A DFDL Insolvency Q&A Publication Series

Series 1

Question No.1	What is the primary legislation which governs corporate insolvency? And, are there any other laws in force dealing with corporate insolvency?
MYANMAR	<p>The primary legislation dealing with corporate insolvency is the Insolvency Law of 2020 (the “Law”). While the Insolvency Rules of 2020 (the “Rules”) have also been framed, the Rules are yet to be enforced.</p> <p>The Yangon Insolvency Act of 1909 (“YIA”) and the Myanmar Insolvency Act of 1920 (“MIA”) were the existing laws (now repealed) that governed the insolvency and bankruptcy regime in Myanmar. The Myanmar Companies Law (“MCL”) includes provisions in relation to winding up of companies incorporated under the MCL in Part V; however, the operation of those provisions is effectively suspended in favor of the Law.</p>
THAILAND	<p>The primary legislation governing corporate insolvency in Thailand is the Bankruptcy Act B.E. 2483 (1940) as amended (the “Law”). This law also provides specific provisions covering reorganizations and restructuring matters. The latest amendment made to the Law was in 2018 – the Bankruptcy Act (No. 10) B.E. 2561 (2018).</p> <p>Prior amendments to the Law to include reorganization proceedings and required specially trained judges with an appropriate knowledge of business practices led to enactment of The Act on the Establishment of Bankruptcy Court and Procedure for Bankruptcy B.E. 2542 (1999). Formal Bankruptcy proceedings in Thailand are governed by a separate law, the Regulations for Bankruptcy Cases B.E. 2549 (2006).</p>
THE PHILIPPINES*	<p>The primary legislation governing corporate insolvency in the Philippines is the Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010 (“FRIA”).</p> <p>The Financial Rehabilitation Rules of Procedure (“FR Rules”) govern the pleading, practice and procedures regarding the rehabilitation of corporations, partnerships, and sole proprietorships, while the Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors (“FLSP Rules”) govern the pleading, practice and procedures regarding the liquidation of insolvent juridical and individual debtors and suspension of payments of insolvent individual debtors.</p>
Question No. 2	Is there any conflict of provisions in the corporate insolvency laws?
MYANMAR	<p>The Law repeals both the YIA and MIA. However, Part V of the MCL, which deals with winding up of companies is not repealed by the Law. With the commencement of the Law, the winding up of companies, incorporated and unincorporated micro, small and medium enterprises (“MSME”) and partnerships must be carried out as per the Law and not under the MCL.</p>

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<ul style="list-style-type: none"> ▪ However, the Law would not apply to the winding up of any company or partnership or bankruptcy of an individual which commenced before the commencement of this Law. The winding-up of such companies or partnerships or bankruptcy of an individual shall be carried out as per the previous law which includes YIA, MIA, and MCL. ▪ However, an application for the winding up of a company or other entity made under the previous law, but not completed before the commencement of the Law will be, unless withdrawn by the applicant, taken to be an application made under the Law. <p>Thus, for proceedings which have commenced under previous laws, provisions of the previous will apply while fresh proceedings and proceedings which have just been applied for will commence as per the provisions of this Law.</p>
THAILAND	There are no conflict provisions provided for under Thai insolvency laws.
THE PHILIPPINES*	No. Previously, insolvency proceedings in the Philippines were governed by Act No. 1956, or the Insolvency Law, which was passed in 1909. The FRIA explicitly repealed the Insolvency Law but allowed all pending proceedings in insolvency, suspension of payments and rehabilitation cases after the law had taken effect to apply the procedures set forth in prior laws and regulations. All petitions filed after it has taken effect shall be governed by the FRIA.
Question No. 3	Who can initiate a corporate rehabilitation proceeding under the insolvency laws?
MYANMAR	<p>A corporate rehabilitation proceeding may be initiated by the following:</p> <ul style="list-style-type: none"> ▪ A company following a resolution passed by the board of directors where it has been resolved that the company is unable to pay, or is unlikely to be able to pay, its debts as and when they become payable; or ▪ A secured creditor who holds security over all or majority of the assets of the company and the terms of such security allows the appointment of a receiver or rehabilitation manager (“Manager”); or ▪ Rehabilitation order passed by a court based on an application made by the company or liquidator of the company or directors or creditors of the company. <p>A rehabilitation proceeding against a company is initiated with the appointment of an insolvency professional as the Manager for the company.</p> <p>A Manager may not be appointed under the following circumstances:</p> <ul style="list-style-type: none"> ▪ The manager has not consented in writing; ▪ Company is already under rehabilitation proceeding and order has not been given by the court for appointment of Manager; ▪ Company is already in liquidation; and ▪ If the company is a bank, a non-banking financial institution, or scheduled entity within the meaning of Section 2 of the Financial Institutions Law.

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<p>In the event a Manager is not appointed as per the Law, insolvency proceeding will not be deemed to have commenced.</p>
<p>THAILAND</p>	<p>A corporate rehabilitation proceeding may be initiated by the following:</p> <ul style="list-style-type: none"> ▪ One or more creditors where the amount of debt owed is at least THB 10 million; or ▪ A debtor who becomes insolvent and is indebted to one or more creditors where the amount owed is at least THB 10 million or in cases where there is a reasonable basis for the financial reorganization of the debtor’s business; or ▪ A state agency having regulatory supervision over the debtor’s business (e.g., the Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance, etc.). <p>Once the reorganization petition is accepted by the Court, certain activities and transaction involving the assets of the debtor will be subject to temporary protection (a stay) against claims by creditors.</p> <p>Creditors are entitled to propose a so-called plan preparer, who drafts a rehabilitation plan (the “Plan”) for the Court’s approval. The court formally appoints plan preparer. After approval, the creditors must submit their claims within 1 month from the date of approval and the plan preparer should complete the drafting of the Plan within 3 months.</p> <p>The Plan will be sent to the creditor and other related-parties.</p> <p>The receiver will then call for a creditors’ meeting to discuss the details of the Plan and consider any proposed amendments thereto. Any proposed revisions should be submitted by the creditors up to 3 days in advance to the meeting.</p> <p>The Plan must then be approved by way of a special resolution passed at a meeting conducted in accordance with the provisions concerning corporate procedures.</p>
<p>THE PHILIPPINES*</p>	<p>Corporate rehabilitation proceedings may be jointly initiated by the corporation, the corporation’s creditors, or the corporation and its creditors.</p> <p>The corporation can initiate voluntary rehabilitation proceedings when approved by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock, or in the case of non-stock corporations, by the vote of at least two-thirds of the members.</p> <p>Any creditor or group of creditors with a claim of, or the aggregate of whose claims is, at least PHP 1 Million or at least 25% of the subscribed capital stock, whichever is higher, may initiate involuntary proceedings against the corporation if:</p> <ul style="list-style-type: none"> ▪ Any creditor or group of creditors with a claim of, or the aggregate of whose claims is, at least PHP 1 Million or at least 25% of the subscribed capital stock, whichever is higher, may initiate involuntary proceedings against the corporation if: ▪ a creditor, other than the petitioner(s), has initiated foreclosure proceedings against the corporation that will prevent the debtor from paying its debts as they become due or will render it insolvent.

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

A corporation, by itself or jointly with any of its creditors, may also file a petition to the court for approval of a pre-negotiated Rehabilitation Plan which has been endorsed or approved by creditors holding at least two thirds of the total liabilities of the corporation, including secured creditors holding more than 50% of the corporation's total secured claims and unsecured creditors holding 50% of the total unsecured claims.

An insolvent corporation may apply for liquidation by filing a petition with the court. Such a filing must be approved by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock, or in the case of non-stock corporations, by the vote of at least two-thirds of the members.

Three or more creditors the aggregate of whose claims is at least either PHP 1million or at least 25% of the subscribed capital stock, whichever is higher, may apply for liquidation of an insolvent corporation if:

- there is no genuine issue of fact or law on the claim(s) of the petitioner(s) and that the due and demandable payments thereon have not been made for at least 180 days or that the debtor has generally failed to meet its liabilities as they fall due; and
- there is no substantial likelihood that the debtor may be rehabilitated.

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

MYANMAR

In the case of winding up of a company, the debts should be paid as per the pari passu liability of the company. As a general concept of law, the rights of secured creditors are ranked above those of unsecured creditors. Thus, the debts of the secured creditors may be given priority over the debts of the unsecured creditors. The Law expressly preserves the rights of secured creditors under their security in a winding up, subject to the priority given to employee entitlements.

In case of rehabilitation of a corporate, the secured creditors enjoy a privilege whereby the Manager may not deal in the properties of the company which would prejudice the interest of the secured creditors. In case of the distribution of proceeds of the sale by the Manager, the priority of the secured creditors stands over the priority of the unsecured creditors.

THAILAND

The claims of secured creditors will be treated with priority with the proceeds from the sale of any collateral being treated separately and remitted to the secured creditors first.

Unsecured claims and expenses are classified into categories and will be satisfied in the order as stipulated under the law. If the bankruptcy estate does not have sufficient funds to pay all creditors' claims within any particular category of claims, then all creditors will have their claims satisfied in equal proportions.

An insolvent debtor can avoid being adjudicated as bankrupt through a "Compromise" agreement. This is where the debtor negotiates a settlement with creditors to pay a certain amount of the debts owed. This Compromise agreement is then presented to the Court for approval. kind of agreement between debtor and his creditors sanctioned by a Court order.

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

THE PHILIPPINES*

Rehabilitation proceedings shall not be deemed in any way to diminish or impair the security or lien of a secured creditor, or the value of its lien or security, except that its right to enforce this security or lien may be suspended during the Rehabilitation proceedings.

The court, upon a motion or recommendation of the rehabilitation receiver, may allow a secured creditor to enforce its security or lien, or foreclose upon property of the debtor securing its claim, if this property is not necessary for rehabilitation of the debtor. The secured creditor and/or other lien holders shall be admitted to the rehabilitation proceedings only for the balance of its claim, if any.

The secured creditor, if lacking adequate protection regarding its claim, may ask the court to order the corporation or the rehabilitation receiver to make arrangements to provide for the insurance or maintenance of the security, or to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may allow the secured creditor to enforce its security claim against the debtor provided that the property subject to the enforcement is not required for rehabilitation of the debtor.

As regards unsecured creditors in rehabilitation proceedings, it is required that the Rehabilitation Plan ensure that payments made under the plan follow the priority established under the provisions of the Civil Code on concurrence and preference of credits and other applicable laws.

Similarly, liquidation proceedings shall not affect or impair the rights of a secured creditor to enforce its lien in accordance with the applicable contract or law. The secured creditor may, however waive its rights under the security or lien, prove its claim in the liquidation proceedings and share in the distribution of the debtor's assets.

If the secured creditor maintains its rights under the security or lien:

- the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance; if its value exceeds the secured claim, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;
- the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
- the secured creditor may enforce the lien or foreclose on the property.

A secured creditor will not be allowed to vote in the election of the liquidator, unless:

- it waives its security or lien; or
- has the value of the property subject of its security or lien fixed by agreement with the liquidator, and is admitted for the balance of its claim.

For unsecured creditors in liquidation proceedings, it is required that the Liquidation Plan ensure that the concurrence and preference of credits as enumerated in the Civil Code of the Philippines and other relevant laws be observed, unless a preferred creditor voluntarily waives its preferred right. In any case, credits for services rendered by employees or laborers to the debtor shall enjoy first preference, unless the claims constitute legal liens.

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

Question No. 5

When can a receiver/liquidator be appointed?
And, who can appoint a receiver under the applicable laws?

MYANMAR

A receiver is an insolvency professional who may be appointed by a secured creditor of the company under the terms of its security to manage and/or realize secured assets to pay the sum secured to the creditor. A receiver may also be appointed by the court.

The Law prohibits the appointment of a receiver by a secured creditor, save in limited circumstances. It is intended that secured creditors will generally exercise their rights to appoint a Manager under the rehabilitation provisions rather than a receiver.

A receiver can be appointed only under the following circumstances:

- where the security pursuant to which the receiver is to be appointed was created before the enactment of the law;
- where the secured creditor does not have security over all or majority of the assets of the company and the law does not otherwise prohibit the appointment of a receiver (allowing for an appointment to a single secured asset of the company rather than its business);
- where the court orders the appointment of a receiver in special circumstances;
- where permitted by the rules;

A receiver may also be appointed in the following periods:

- during the period in which the secured creditor is bound to observe a rehabilitation plan under corporate or MSME rescue and rehabilitation and the appointment is permitted by the plan; and
- when the company is in liquidation.

A liquidator, on the other hand, is entrusted with proceedings of winding up and liquidation of a company. The winding-up commences upon the appointment of a liquidator.

A liquidator may be appointed by the members of the company or the creditors of the company in cases of a voluntary winding up. He/she may also be appointed by the court upon a court-ordered winding up.

THAILAND

The Minister of Justice or his agent(s) has the power to appoint one or more persons, as he deems appropriate, to be a receiver (the "Receiver"), whether the appointment is made in the appointee's individual or ex-officio capacity and has the power to remove the appointee. The appointment or removal of the receiver is publicly announced via publication in the Government Gazette.

Once appointed by the Court, the Receiver has the power to:

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<ul style="list-style-type: none"> ▪ manage and dispose of the debtor’s property or to take any action deemed necessary for the accomplishment of the debtor’s unfinished business; ▪ collect and receive money or property on the debtor’s behalf or to which the debtor is entitled to receive from other persons; and ▪ conclude a Compromise or institute any action or defend against any actions taken in connection with the debtor’s property.
THE PHILIPPINES*	<p>If the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, within five working days from the filing of the petition, issue a Commencement Order wherein it shall appoint a rehabilitation receiver.</p> <p>In the case of liquidation proceedings, the Liquidation Order shall set the date for election and appointment of the liquidator between 30 - 45 days from the date of last publication of the petition or motion to convert the rehabilitation proceedings into liquidation proceedings. Only creditors that have filed their claims within the period set by the court and whose claims are not barred by the statute of limitations will be allowed to vote in the election of the liquidator.</p>
Question No. 6	What are the protections available to a company during the corporate insolvency proceeding?
MYANMAR	<p>The following protections are available to a company during the insolvency proceedings:</p> <ul style="list-style-type: none"> ▪ No action, proceeding or arbitration against the company or its property may be proceeded with or commenced without the leave of the Court or on such terms as the Court may impose; ▪ No attachment, sequestration, distress or execution may be put in force against the company or its property; ▪ No transfer of shares or any alteration in the status of the company's members arising from the transfer may be made without the express consent of the Manager; ▪ The property used by the company or in possession of the company cannot be transferred to the owner or lessor without leave of the court; ▪ No step to enforce or continue to enforce security over the property of the company may be exercised by any person without leave of court or written consent of Manager; and ▪ No legal process may be initiated or if initiated, continued against the guarantor of the company without leave of court.
THAILAND	<p>Certain substantial protections and immunities are granted to the debtor during the insolvency process:</p> <ul style="list-style-type: none"> ▪ No proceedings may be initiated for the dissolution of the debtor and any pending proceedings are stayed; ▪ The Thai Companies Registrar cannot issue an order dissolving or otherwise effecting the registration of a juristic person and such juristic person cannot be legally dissolved by other means;

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

- The Bank of Thailand, the Office of Securities and Exchange Commission, the Department of Insurance or the relevant state agencies, as the case may be, are not permitted to revoke a license covering the business operations of debtor or order the debtor to cease its business operations without seeking permission from the Court to do so;
- No civil actions can be initiated against the debtor in connection with the debtor’s property and any disputes in which the debtor may be liable or suffer loss cannot be referred to arbitration for a decision if the obligation arose before the date of the Court’s order approving the plan. No other bankruptcy actions can be initiated against the debtor. If an action was initiated prior to the insolvency filing or a dispute has previously been referred to arbitration, then these proceedings will be stayed, unless the Court orders otherwise;
- A creditor with an unsatisfied judgment cannot execute the judgment against the debtor’s property if the obligation to which the judgment relates arose before the date of the Court’s order approving the plan. In the case where the execution has previously been undertaken, the Court will stay such execution unless the Court orders otherwise or the execution has been completed before the Executing Officer responsible for enforcing the judgment became aware of the filing of the bankruptcy petition, or the execution of the Court’s judgment requiring the debtor’s delivery of specific property has been completed prior to such date;
- A secured creditor shall not exercise enforcement for payment of the debt against property given as security unless upon permission is granted by the Court;
- A creditor legally entitled to exercise self-help enforcement for payment of the debt cannot seize or sell the debtor’s property;
- Owners of assets that are important to the debtor’s business, under hire purchase, sale, or other agreement, may not repossess the assets. All pending proceedings are stayed, unless there has been a default of at least two successive payments due;
- The debtor may not dispose or transfer assets, or offer them as settlement of debts or mortgage them without the Court’s consent, unless the transaction is a normal and necessary part for the debtor’s business;
- Any interim order granted may be revoked, suspended or varied by the Court. If the petition is rejected, does not proceed or is revoked, such preservation orders may be reinstated; and
- Any provider of public utilities as electricity, water or telephone may not suspend services supplied to the debtor unless granted permission to do so by the Court or unless, after the date of the Court’s business reorganization order, the debtor, the Receiver, the interim executive, the plan preparer, the plan administrator or the interim plan administrator, as the case may be, has failed to make two successive payments of charges accruing after the date of the Court’s business reorganization order.

THE PHILIPPINES*

The Commencement Order in rehabilitation proceedings shall include a Stay or Suspension Order which shall suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the corporation, and suspend all actions to enforce any judgment, attachment or other provisional remedies against the corporation.

In addition to the Stay or Suspension Order, the Commencement Order shall:

- Prohibit, or otherwise render null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the corporation after the commencement date;

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<ul style="list-style-type: none"> ▪ Serve as the legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors; ▪ Serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date; ▪ Consolidate the resolution of all legal proceedings by and against the debtor to the court; and ▪ Exempt the debtor from liability for taxes and fees, including penalties, interests and charges thereof due to the national government or the local government unit until the approval of the Rehabilitation Plan or dismissal of the petition. <p>In liquidation proceedings, upon the issuance of a Liquidation Order, all contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator declares otherwise and the contracting party agrees. No separate action for the collection of an unsecured claim shall be allowed and no foreclosure proceedings shall be allowed for a period of 180 days.</p>
Question No. 7	Does the law separately provide for the duties of directors and how does it pave with the existing laws?
MYANMAR	The Law does not separately provide for specific duties for directors of companies undergoing restructuring or rehabilitation or winding up, rather the powers of directors are restricted (See below).
THAILAND	<p>Under the Law, should a juristic person's board of directors fail to call for an extraordinary general meeting of the shareholders to assess its loss as required by law, each director may be held criminally liable and subject to the payment of a penalty of up to THB 20,000 under the Act on Offences Concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499 (1956).</p> <p>A director, manager, managing partner, partner with unlimited liability, person responsible for the operation of business or auditor of the debtor are all considered to be insiders of the debtor.</p> <p>A director has the same duties and is subject to the same criminal liability as imposed on the corporate debtor in respect of transactions done by him at the time of his operation of the debtor's affairs.</p>
THE PHILIPPINES*	<p>No. In rehabilitation proceedings, the management of the juridical debtor shall remain with the existing management. Nonetheless, the court may appoint and direct the rehabilitation receiver to assume the powers of the corporation's management or appoint a management committee that will undertake the management of the corporation, upon clear and convincing evidence of any of the following circumstances:</p> <ul style="list-style-type: none"> ▪ Actual or imminent danger of dissipation, loss, wastage or destruction of the corporation's assets or other property; ▪ Paralysis of the corporation's business operations; or ▪ Gross mismanagement of the corporation, fraud or other wrongful conduct on the part of or gross or willful violation of the FRIA by the existing management of the corporation or the director, officer or representative(s) in management of the debtor.

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

Question No. 8	Are there any restrictions on the power of directors with the onset of corporate insolvency?
MYANMAR	With the initiation of the rehabilitation proceeding of a company, the directors of the company cease to have any power of the company. The Manager who is appointed on behalf of the company as an insolvency practitioner to oversee the rehabilitation proceeding may perform the activities of the directors of the company. Further, the Manager will have the power to appoint new directors or remove existing directors of the Company.
THAILAND	<p>The Law does not require directors to commence bankruptcy and reorganization proceedings. Nevertheless, the board of directors has a duty to call for an extraordinary general meeting of shareholders when the company is operating at a significant loss (i.e., where the loss is equal to at least half of the company's registered capital).</p> <p>After bankruptcy proceedings are commenced by or against the debtor, the directors and officers are not prohibited from exercising the powers in connection with the management of assets or business of the debtor. However, as prescribed by Section 24 of the Law, once the Court has ordered the debtor be under receivership, the powers of the directors in connection with their corporation's assets or business activities will cease and are transferred to the Receiver.</p>
THE PHILIPPINES*	Yes. While the management of the juridical debtor shall remain with the existing management, as mentioned above, all disbursements, payments or sale, disposal, assignment, transfer or encumbrance of property, or any other act affecting title or interest in property, shall be subject to the approval of the rehabilitation receiver and/or the court.
Question No. 9	Is there any difference between financial credit and operational credit?
MYANMAR	<p>No, the term financial and operational credit has not been defined under the Law. Accordingly, no distinction between the two has been recognized under the Law.</p> <p>A corporate resolution proceeding may commence if a company is unable to or it is unlikely that the company will be able to pay its debts. Similarly, a liquidator may initiate a winding-up proceeding against a company that is unable to or it is unlikely that the company will be able to pay its debts. Debts may be either financial or operational debts.</p>
THAILAND	Under the Law, there is no provisions differentiating financial credit/creditor and operational credit/creditor.
THE PHILIPPINES*	Yes, operational credits deemed as administrative expenses under the FRIA may be paid during the rehabilitation proceedings ahead of financial credits. In rehabilitation proceedings, the issuance of the Commencement Order shall prohibit the corporation's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the corporation makes payments for the services or goods supplied after such

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<p>issuance and authorizes the payment of administrative expenses as they become due. Administrative expenses refer to those reasonable and necessary expenses incurred in the ordinary course of business of the corporation after the commencement date, among others.</p> <p>Subsisting contracts which have been confirmed by the corporation, with the consent of the Rehabilitation Receiver, after the commencement date shall also be considered administrative expenses. Compensation of employees required to carry on the business and claims for salary and separation pay for work performed after the commencement date are also considered administrative expenses.</p>
Question No. 10	Is there a specific time-frame for the corporate insolvency or winding-up proceedings to be concluded under the applicable laws?
MYANMAR	<p>No, the Law does not provide a definitive time-frame for completion of the entire rehabilitation proceeding or winding up proceeding for a company.</p> <p>For rehabilitation proceedings, the Law requires the Manager to conduct a meeting of creditors within three months from the date of appointment and float the Rehabilitation Plan. While the Rehabilitation Plan may contain the period within which the rehabilitation of the company must be effected, the Law does not specify the period by which the Rehabilitation Plan has to be implemented. However, creditors and the court have the power to terminate the plan should it not be meeting its goals.</p> <p>The Law is silent on the total period within which the winding-up process for the company is to be completed.</p>
THAILAND	<p>Under Section 1266 of the CCC and Section 88 of the Law, if the liquidator of the company finds that after the whole of the contributions or shares has been paid up its assets are insufficient to meet the company's liabilities, the liquidator must apply at once to the Court to have the company declared bankrupt.</p>
THE PHILIPPINES*	<p>Yes. Under voluntary and involuntary rehabilitation proceedings, the court shall have a maximum period of one year from the date of filing the petition to confirm a Rehabilitation Plan. The Rehabilitation Plan shall include the duration of the rehabilitation. If no Rehabilitation Plan is confirmed within the said period, the proceedings may be terminated or converted into one for liquidation.</p> <p>Under pre-negotiated rehabilitation, the court shall have a maximum period of 120 days from the date of filing the petition to approve the Rehabilitation Plan. If the court fails to act within this period, the Rehabilitation Plan shall be deemed approved.</p> <p>In liquidation proceedings, the Liquidator shall submit a Liquidation Plan to the court within three (months from his or her assumption of duties. The Liquidation Plan shall include a schedule of liquidation of the assets and payment of the claims. The liquidator shall implement the Liquidation Plan as approved by the court.</p>

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

MYANMAR

Yes, the concept of suspicion and suspension is recognized under the Law.

Any past transaction involving the following matters may be deemed to be a suspicious transaction if it causes the company to become insolvent or had taken place after the company has become insolvent:

- transactions involving gifts;
- transactions without consideration or at a considerably significantly less than the present value;
- a transaction where a creditor has received an amount more than it would have ordinarily received in respect of unsecured debt;
- provision of credit by a company for any overpriced transaction; and
- creation of a floating charge on the companies undertaking or property (save for specific circumstances under the Law).

Depending on the transaction mentioned, the suspicion period may vary from anywhere 6 months to 5 years from the initiation of rehabilitation or liquidation of a company.

In case a transaction is adjudged as a suspicious transaction, the court may pass an order and restore the position of the company to what it would have been had the suspicious transaction not been entered into. Some of the other orders that may be passed by the court are order for any property transferred by or as part of such transaction to be vested in the company, order to release or discharge in whole or in part any security given by the company and order to require any person to pay any sums received by him or her by way of benefit from the company.

A *suspension period* on the other hand, is a period when the business of the company is undergoing a winding-up proceeding and is about to be liquidated. During this period, the regular business activities of the company are suspended and the appointed liquidator shall act as the agent of the company to undertake such activities as required to offset the liabilities of the company. Upon distribution of the debts as per priority claims and holding the meeting of creditors and members, the company proceeds to dissolution. The name of the company is then struck off from the records of the Directorate of Investment and Company Administration (“**DICA**”), which is the registrar of companies in Myanmar.

THAILAND

The Law, in certain circumstances, allows the Court to protect the debtor’s property. That is to say, the Receiver is entitled to recall the debtor’s assets by filing a motion to the Court for an order to cancel any fraudulent acts of the debtor. If fraudulent acts arose within the period of one year before the application for adjudication of bankruptcy, were gratuitous acts, or resulted in the debtor receiving compensation of less than a reasonable amount, it is presumed that the debtor and the person enriched thereby knew that such act would be to the prejudice of the creditors.

Upon the filing of a motion by the Receiver, the Court is empowered to cancel any transfer of assets or any act done or permitted to be done by the debtor during the 3 months prior to the application for adjudication of bankruptcy with the intent to enable any creditor to have an advantage over other creditors.

	<p>Additionally, if a creditor who has become advantaged is an insider of the debtor, the Court has the power to order a cancellation of the transfer of property or any act done by the debtor or done with the debtor's consent occurring within the period of 1 year before the bankruptcy petition.</p>
THE PHILIPPINES*	<p>Yes. In rehabilitation proceedings, the court may rescind or declare as null and void any sale, payment, transfer or conveyance of the debtor's unencumbered property or any encumbrance thereof by the debtor or its agents or representatives after the commencement date which are not in the ordinary course of the business of the debtor. Moreover, any transaction occurring prior to commencement date entered into by the debtor or involving its funds or assets, may be rescinded or declared null and void on the grounds that it was executed with intent to defraud a creditor or creditors or which constitute undue preference to certain creditors.</p> <p>Similarly, under liquidation proceedings, any transaction occurring prior to the issuance of the Liquidation Order or, in case of the conversion of the rehabilitation proceedings to liquidation proceedings prior to the commencement date, entered into by the debtor or involving its assets, may be rescinded or declared null and void on the grounds that it was executed with intent to defraud a creditor or creditors or which constitute undue preference to certain creditors.</p>
Question No. 12	When does a corporate insolvency proceeding transition to a winding-up process?
MYANMAR	<p>The transition of a corporate insolvency proceeding to a winding-up proceeding may take place on the occurrence of the following:</p> <ul style="list-style-type: none"> ▪ the creditors of the company resolve that rehabilitation plan cannot be given effect to and the rehabilitation plan is terminated; ▪ no rehabilitation plan can be formulated and if the rehabilitation plan is formulated, then it cannot be agreed upon by the creditors; ▪ creditors resolve to wind up the company in the meeting of the creditors; and/or ▪ the court resolves to wind-up the company.
THAILAND	<p>When the Court has issued an absolute receivership order against the debtor and the Receiver has reported that the creditors, at the first meeting of creditors or at the adjourned meeting, passed a resolution requesting the Court to adjudge the debtor bankrupt or passed no resolution or that no creditors attended the meeting or that the composition in satisfaction of debts failed to be approved, the Court shall adjudge the debtor bankrupt and the Receiver shall then have the power to manage the bankrupt's property for distribution amongst all creditors.</p> <p>Once the Receiver has made the final distribution of the assets of the debtor, has ceased to take action under a Compromise agreement, or when the debtor has no distributable assets, the receiver can prepare a report of the business and accounts for receipts and expenditures and submit the same to the Court and request a court order for closure of the case.</p>

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

	<p>The Receiver will then publish the adjudication in the Government Gazette and in at least one daily newspaper. The publication should indicate the name, address and occupation of the debtor as well as the date of the adjudication by the Court.</p>
THE PHILIPPINES*	<p>There are multiple instances when the rehabilitation proceedings may be converted into liquidation proceedings, thus:</p> <ul style="list-style-type: none"> ▪ After receipt of the report of the rehabilitation receiver, the court may convert the proceedings into one for the liquidation of the debtor upon a finding that the debtor is insolvent and there is no substantial likelihood that the debtor will be successfully rehabilitated. ▪ If no Rehabilitation Plan is confirmed within one year from the date of the filing of the petition. ▪ Upon a breach of, or upon a failure of the Rehabilitation Plan. ▪ If the rehabilitation proceedings are terminated due to failure of rehabilitation or dismissal of the petition for reasons other than technical grounds. ▪ The debtor may initiate liquidation proceedings by filing a motion at any time to the same court where court-supervised or pre-negotiated rehabilitation proceedings are pending. ▪ Three or more creditors whose claims are at least either PHP 1 million or at least 25% of the subscribed capital of the debtor, whichever is higher, may also initiate liquidation proceedings by filing a motion in the same court at any time where the court-supervised or pre-negotiated rehabilitation proceedings are pending. <p>While court-supervised or pre-negotiated rehabilitation proceedings are pending, the court may order the conversion of rehabilitation proceedings to liquidation proceedings upon the recommendation of the rehabilitation receiver that rehabilitation of the debtor is not feasible.</p>
Question No. 13	Is there a dedicated regulator and a dedicated court or tribunal for insolvency matters?
MYANMAR	<p>No, the DICA, which is also the registrar of companies for Myanmar serves as the regulatory authority for insolvency and bankruptcy proceedings. There are no dedicated courts or tribunals for dealing in insolvency matters and we understand that the courts having jurisdiction over commercial cases will have the jurisdiction for insolvency matters.</p>
THAILAND	<p>Yes, a specialist Bankruptcy Court (the “Court”) was established by the Act on the Establishment of and Procedure for the Bankruptcy Court BE 2542.</p> <p>Currently, the Central Bankruptcy Court, Regional Bankruptcy Court and Supreme Court in the Bankruptcy Division are specialized Courts that have separate jurisdiction to adjudicate cases relating to bankruptcy and business reorganizations.</p>

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

THE PHILIPPINES*	<p>In general, cases under the FRIA fall under the jurisdiction of Special Commercial Courts.</p> <p>Excluded from the provisions of the FRIA are debtors which are:</p> <ul style="list-style-type: none"> ▪ Banks which are governed by the New Central Bank Act (Republic Act No. 7653); ▪ Insurance companies, which are governed by the Insurance Code (Presidential Decree No. 1460); and ▪ Pre-need companies, which are governed by the Pre-Need Code of the Philippines (Republic Act No. 9829).
Question No. 14	Does the law governing insolvency proceedings provide for personal insolvency and bankruptcy proceedings?
MYANMAR	<p>Yes, the Law has a dedicated chapter for insolvency and bankruptcy proceedings against individuals. For insolvency of a natural person, the Law provides for the rehabilitation of such a person by making a compromise with the creditors and paying off the debts. In case rehabilitation is not possible, a formal bankruptcy proceeding is initiated by the creditors or by the debtor by applying to the court. A liquidator is appointed to supervise the bankruptcy proceeding and ensure that the debts of the individuals are duly paid.</p>
THAILAND	<p>Yes, the Law provides that a creditor or group of creditors may file bankruptcy proceedings against an individual person, provided that the debtor becomes insolvent and is indebted to one or more plaintiff creditors in an amount of at least THB 1 million.</p>
THE PHILIPPINES*	<p>Yes. An individual debtor who, possessing sufficient property to cover all of his or her debts but foreseeing the impossibility of meeting them when they respectively fall due, may file a verified petition that he or she be declared in the state of suspension of payments.</p> <p>An individual debtor whose properties are not sufficient to cover his or her liabilities, and owing debts exceeding PHP 500,000, may apply to be discharged from his or her debts and liabilities by filing a verified petition with the court.</p> <p>Any creditor or group of creditors with a claim of (or with claims aggregating) at least PHP 500,000 may file a verified petition for liquidation with the court of the province or city in which the individual debtor resides if he or she commits any act of insolvency stated in the law.</p>
Question No. 15	Is the concept of transnational or cross-border insolvency recognized? And, are there separate provisions dealing with cross-border insolvency?

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

<p>MYANMAR</p>	<p>Yes. The concept of cross border insolvency is recognized under the Law.</p> <p>The provisions of cross-border insolvency apply to:</p> <ul style="list-style-type: none"> ▪ insolvency proceedings in a foreign state when assistance is sought by a foreign court or foreign representative in respect of such foreign proceedings; or ▪ insolvency proceedings in a foreign state concerning this Law; or ▪ when a concurrent foreign and domestic insolvency proceedings under this Law involves the same debtor; or ▪ when a creditor or other individuals in a foreign country have an interest in an insolvency proceeding under this Law. <p>However, this Part of the Law does not apply to proceedings concerning banks, financial institutions, and insurance businesses and will also not apply to other businesses or entities as and when notified by the President.</p>
<p>THAILAND</p>	<p>With respect to insolvency proceedings, Thailand follows the territoriality principle (as opposed to the universality principle) and has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. Nor is Thailand a signatory to any treaties on international insolvency. Foreign judgments or orders with respect to insolvency proceedings in other countries are not recognized under Thai law.</p> <p>While Thailand is not a party to any international treaty on insolvency or recognition of foreign judgments, it is generally accepted that a foreign judgment may form part of the evidence in a case brought in Thai courts on the same subject matter, and is considered as ‘firm evidence’ for consideration of the Court. It should be noted that foreign judgments should be final and conclusive, not contrary to Thai public policy, and given by a court of competent jurisdiction.</p> <p>Moreover, under Section 178 of the Law, in cases where the creditor is domiciled outside Thailand, he or she can make a claim for repayment of debts owed through a bankruptcy action upon compliance with the following conditions:</p> <ul style="list-style-type: none"> ▪ prove that the creditors in Thailand are similarly entitled to make a claim for payment of debts in bankruptcy actions under the laws and before the Courts of the countries of which the foreign creditor is national; and ▪ report the amount of the assets or distribution that he or she has received or is entitled to receive from the same debtor’s assets located outside Thailand, if any. If so, he or she must agree to deliver the assets in order to be added to the debtor’s assets in Thailand.
<p>THE PHILIPPINES*</p>	<p>Yes. The Model Law on Cross-Border Insolvency of the United Nations Center for International Trade and Development has been adopted as part of the FRIA.</p>

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

KEY CONTACTS

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

MYANMAR



Nishant Choudhary

Partner, Deputy Managing Director &
Head of Banking and Finance Practice, Myanmar
nishant.choudhary@dfd.com

THAILAND



Jonathan Blaine

Tax Director, Thailand &
Co-Head of the Regional
Restructuring & Insolvency Practice
jonathan.blaine@dfd.com

THE PHILIPPINES*



Jude Ocampo

Partner, Ocampo & Suralvo Law Offices
jocampo@ocamosuralvo.com

* DFDL collaborates with Philippine law firm, Ocampo & Suralvo Law Offices for local legal advice.

EXCELLENCE · CREATIVITY · TRUST

Since 1994

BANGLADESH | CAMBODIA* | INDONESIA* | LAO PDR | MYANMAR | PHILIPPINES* | SINGAPORE | THAILAND | VIETNAM

[†]DFDL collaborating firms