

Indonesia

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Due diligence

1 How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Title to and legal ownership of a vessel registered under Indonesian law is evidenced by a registration deed issued by the Indonesian Directorate General of Sea Transportation (DGST) at the Ministry of Transportation in Jakarta or a DGST official appointed by the DGST at an Indonesian port.

2 How can one determine whether there are any liens recorded over a vessel?

Upon receipt of a written request, the DGST may, but is not required to, issue an official statement in a letter verifying the registration deed or listing the mortgages of record registered against the vessel.

3 How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

In addition to mortgages, generally speaking, security interests can be created over tangible property, accounts receivable and insurance proceeds, and shares. Security interests are created over tangible property, accounts receivable and insurance proceeds by the borrower signing a security agreement known as a fiduciary security deed (FSD) and registering the FSD in the Fiduciary Registration Office (FRO). The FRO does not maintain a computerised database of the FSDs registered in the FRO. Searches for registered FSDs can only be done manually at the FRO but the searches are not very reliable. To conduct a search against the grantor of the security interest, the person conducting the search must have been given a power of attorney by the grantor. A pledge of shares can also be evidenced by an FSD and registered at the FRO but pledges of shares are most often signed as pledges and perfected by having the pledge noted in the Register of Shareholders of the company whose shares are subject to the pledge. Registers of Shareholders are maintained by each company and are not publicly available. There is no company register maintained by the Indonesian government where share pledges executed as a pledge and not as an FSD can be checked.

4 Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

Indonesia does not recognise the concept of good standing. Until recently, there was no way of checking the status of an Indonesian company. The Ministry of Law and Human Rights (MOLHR) recently established a register that will reflect the composition of a company's shareholders, board of directors and board of commissioners, as well as its deed of establishment and amendments to its articles of association (AOA). A member of the public may request the MOLHR to provide information from the register by submitting a request to the MOLHR. However, there is no certainty that the register or the information provided by the MOLHR will be accurate.

5 Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Directors are the only persons authorised to represent a company and the scope of a director's authority will be set out in a company's AOA. AOA and amendments thereto must be submitted to and approved or acknowledged by the MOLHR and then published in the Indonesian State Gazette. However, it is not currently possible to rely on the information in the State Gazette because publication of AOA's in the Indonesian State Gazette (copies of which can be obtained at the State Printing Office) can occur months, if not years, after an AOA or an amendment thereto was signed.

Changes in directors do not require an amendment to the AOA, but the shareholder resolution electing directors will, nevertheless, need to be reported to the MOLHR within a prescribed time and reported to the Ministry of Trade.

To confirm the directors of a company, one reviews the company's AOA, the resolution of the shareholders electing the current directors and evidence that such resolution has been submitted to the MOLHR in a timely manner. In addition, a request can be submitted to the MOLHR for information on a company, as explained in question 4. If the information obtained as a result of these efforts is consistent, one can be reasonably certain as to the identities of the company's directors.

For publicly listed Indonesian companies, information on shareholders, other equity interest holders, directors and officers can be found on the website of the Indonesian Stock Exchange or in the audited financial reports of a company, which are usually publicly available.

With respect to a company's officers and employees, their powers and the determination of people who are authorised signatories will be based on board of directors' and shareholders' resolutions and powers of attorney, but none of these are publicly available. To bind a company, an officer or other employee must have obtained a power of attorney or other specific authorisation to do so because Indonesia does not recognise the doctrine of apparent authority.

6 What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

The AOA will set out the actions necessary for an Indonesian company to borrow money or guarantee another party's debt obligation. It is common for the AOA to require a board of directors' resolution, board of commissioners' approval or shareholders' resolution and sometimes more than one of the foregoing before entering into a material debt obligation, any guarantee or any encumbrance of the company's assets. All of these approvals would usually be required for any guarantee except for a guarantee by a parent company of one of its subsidiaries' debt obligation (in which case only the approvals required by the AOA are required). In addition, shareholder approval is required if the assets being encumbered exceed 50 per cent of the company's net assets.

7 Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

No, foreign lenders do not have to qualify to do business in Indonesia to extend credit to an Indonesian borrower and foreign creditors will not be deemed resident in Indonesia solely by virtue of making a loan or other extension of credit to an Indonesian obligor.

Repayment

8 Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Bank Indonesia's approval is not necessary for a company to enter into or repay a loan in foreign currency. We note there are obligations to notify Bank Indonesia of the company's intent to enter into a foreign loan, register the loan with Bank Indonesia and to submit regular reports on the foreign loan to Bank Indonesia. There are also obligations to comply with hedging and liquidity requirements and maintain a minimum credit rating in certain circumstances when obtaining a foreign loan. Finally, there are reporting obligations if amounts in excess of US\$100,000 are transferred overseas.

Bank Indonesia recently issued Bank Indonesia Regulation 17 of 2015 (BI Regulation 17) and a Circular Letter elaborating on BI Regulation 17. BI Regulation 17 and the Circular Letter require all domestic transactions to be settled in rupiah unless the transaction is entitled to one of the exemptions to the requirement listed in BI Regulation 17. As a result, loans with domestic banks will likely need to be made in rupiah. While loans by foreign lenders can be made in foreign currency, a lender will need to understand which of the documents to be entered into in connection with the transaction or project being financed by the offshore loan may provide that payments thereunder can be made in the foreign currency.

9 Do usury laws limit the interest payable to a lender in respect of a vessel financing?

There is no limitation on the amount of interest that may be charged. The Indonesian Civil Code provides that parties to a contract may agree on an interest rate. While there is no limit on the amount of interest payable between unrelated parties, Indonesian courts may consider if the lender is being unjustly rewarded if the amount of interest payable is challenged by a party. Under the Usury Law of 1938 (contained in State Gazette No. 524 of 1938), Indonesia restricts the imposition of excessive or extraordinary interest rates (as determined by the courts, upon application) and allows the debtor to request the Indonesian courts to lower the agreed interest rate or cancel the agreement. In our experience, this law is rarely applied.

10 Are withholding taxes payable on principal or interest payments to non-resident lenders?

Withholding taxes are payable on interest payments to non-resident lenders. The current withholding tax rate is 20 per cent, which may be reduced by compliance with the applicable Tax Treaty. There is no withholding tax payable on repayments of principal.

Registration of vessels

11 What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

Any vessel of at least 7 gross tonnes can be registered under the Indonesian flag. Offshore drilling rigs and mobile offshore drilling units are considered vessels under Indonesian law. Registration results in the vessel obtaining Indonesian nationality, requiring the vessel owner to comply with Indonesian laws and regulations related to the ownership and operation of the vessel.

12 Who may register a vessel in your jurisdiction?

An Indonesian individual, a wholly Indonesian-owned company or a joint venture company (PMA Company) the majority of whose shares (at least 51 per cent) are owned by Indonesian individuals or wholly

Indonesian-owned companies (or both) can register a vessel in Indonesia. However, for a PMA Company with foreign ownership engaged in the shipping business to register vessels in its name, it must own at least one vessel of at least 5,000 gross tonnes. For companies that have an Indonesian publicly listed company as a shareholder, the current policy of the DGST is that such public company may be deemed a wholly Indonesian-owned company if at least 51 per cent of its shareholders are Indonesian citizens or wholly owned companies as stated in its AOA, but this depends on the policy of the DGST at any given time.

13 Is there an alternate registry for international shipping operations?

No, there is no such alternate registry in Indonesia.

Ship mortgages and other liens over vessels

14 What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

There is only one type of ship mortgage. While a form of ship mortgage deed is provided in the Indonesian shipping regulations, in practice, parties can submit their own mortgage form. However, there is no guarantee the DGST will accept any mortgage form that is not similar to the short form provided in the regulations. If parties choose to use the short form provided by law, they can enter into a separate deed of covenants but the deed of covenants will not be registered with the DGST. Parties can agree to secure any obligation, including contingent obligations, but the mortgage deed will need to specify the amount being secured by the mortgage.

15 Give details of any required form for ship mortgages in your jurisdiction?

The ship mortgage deed form is an attachment to Minister of Transportation Regulation No. PM 13 of 2012 regarding Vessel Registration and Nationality. A standard ship mortgage deed must contain at least:

- the number and date of the deed;
- the name and location of the vessel registration official;
- the names and domiciles of the mortgagor and mortgagee;
- the number and date of the vessel registration deed or change of ownership deed;
- certain data concerning the vessel, for example, the name of the vessel, the vessel measurements and the number of the vessel registration deed;
- the basis of the mortgage, namely, information on the underlying agreement setting forth the obligation being secured; and
- the mortgage value.

16 Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The DGST maintains the register of mortgages. There is a central register maintained by the DGST in Jakarta and a local register at any local DGST office authorised to maintain a register of mortgages. The central register contains information on all vessels registered in Indonesia, while the local registers only contain information on the vessels registered at the local DGST office. The register usually contains information on the mortgage deed, including the names and addresses of the mortgagor and mortgagee and the date of the mortgage deed. The registration results in the creation of a valid security interest being placed over the vessel in favour of the mortgagee.

17 Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

Yes, the total amount of the mortgage must be stated in the mortgage deed although the amount need not equal the amount of the underlying debt. The mortgage does not contain a maturity date. Due to its accessory nature, once the underlying loan is settled, the mortgage registration must be revoked. A copy of the underlying debt instrument must be filed with the DGST office at which the mortgage will be registered.

18 Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Yes, a mortgage can be registered in the name of an agent or trustee for the benefit of multiple lenders if the underlying loan agreement so provides and if there is valid authorisation from the lenders to the agent or trustee to act on behalf of the lenders.

19 If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

Any change to the information in a mortgage, as mentioned in question 15, must be reported to the DGST office where the mortgage was registered, following which the mortgage will be amended accordingly.

20 If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

An application for an assignment of mortgage must be submitted to the DGST office where the mortgage was registered. The mortgagor's consent is required.

21 What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

No maritime liens over vessels are recognised in Indonesia other than vessel mortgages. The right to arrest a vessel is provided under Indonesian law. In short, a harbour master can arrest vessels based on a court order issued in a criminal or civil case. Under the Indonesian Shipping Law, when the arrest of a vessel is related to a civil law claim, the claim to the court is called a 'maritime claim'. The conditions that may give rise to a maritime claim are described in the Indonesian Shipping Law. Briefly stated, these claims relate to, among others, losses or damages resulting from the operation of a vessel and costs incurred in respect of a vessel, including charter hire, towage costs, salvage costs, port costs, etc.

22 What maritime liens rank higher than a mortgage lien?

While not liens, payment of certain shipping-related receivables under the Indonesian Shipping Law, including payment of salaries to captains and crew members of a vessel, salvage costs and payment of port fees, have priority over a vessel mortgage. In addition, claims for unpaid taxes and customs have priority over a mortgage lien.

23 May non-mortgage liens be recorded over a vessel?

The prevailing shipping regulations provide that other rights in rem may be registered with the relevant DGST office. However, we are not aware of any registration of a non-mortgage lien and doubt that the DGST or a DGST official at an Indonesian port would register such a lien.

24 Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Foreign-flagged vessels cannot be registered in Indonesia and, therefore, mortgages cannot be registered on foreign-flagged vessels.

25 What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

While a mortgagee has the right to sell the vessel privately, in practice, the mortgagor has to consent to a private sale at the time of the sale. In other words, consent to a private sale in the mortgage itself will not be sufficient. As a result, enforcement of a mortgage in Indonesia is done through the Indonesian courts. To do so, the mortgagee will file a motion to foreclose and, upon receipt of a court order, a public auction will be conducted by the State Auction Office under the supervision of an Indonesian district court. The timing of judicial sales varies. In practice, if the foreclosure action is contested and the mortgagor appeals adverse decisions all the way to the Supreme Court, it could take three to five years, or longer, to obtain a final court decision. Once a final court decision is issued, the sale by the State Auction Office usually takes one to three months, or longer, depending on

whether the mortgagor continues to try to thwart or hinder the foreclosure or sale process. The court's and auction office's costs in relation to the foreclosure vary on a case-by-case basis. Interlocutory sales are not permitted.

26 May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

Yes, a vessel may be sold privately by a mortgagee pursuant to a power of attorney to sell the vessel granted by the mortgagor, provided the mortgagor does not object to the private sale process. In practice, courts have determined that consent by a mortgagor for the sale of a vessel must be contemporaneous with the foreclosure of a mortgage. However, the sale will not discharge liens over the vessel, unless the underlying loan has been terminated and the mortgage has been revoked.

27 What are the limitations on rights of self-help by a mortgagee?

As discussed in question 26, a sale by a mortgagee will not discharge liens over the vessel, unless the underlying loan has been terminated and the mortgage has been revoked.

28 What duties does a mortgagee owe to an owner or third-party creditors?

By law, there are none except for the duty to return the proceeds of any foreclosure sale in excess of the amount of the secured obligation to the borrower.

Collateral

29 May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

By law, finance leases or other charters can be recorded over Indonesian-flagged vessels. However, we are not aware of any instance where a DGST office has accepted an application to register a finance lease or other charter.

30 May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

To our knowledge, finance leases are not used to finance vessels. Domestic finance leases can only be entered into with companies licensed as finance leasing companies by the Ministry of Finance and offshore finance lease transactions present substantial licensing issues as well as import issues if the vessel is being acquired from an offshore entity.

31 How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

As discussed in question 3, security interests are created by executing FSDs and registering FSDs in the FRO. The security interest is perfected upon such registration. Only receivables under a contract can be subjected to an FSD - other rights and obligations under a contract cannot be assigned for security purposes.

32 Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Security interests against non-vessel collateral that are created under an FSD must be registered at the FRO.

33 How is a security interest over a deposit account established? How is a security interest perfected?

Under Indonesian law, a pledge can be granted only over moveable property and the property needs to be in the control of the creditor for the pledge to be perfected. As a result, given that for most types of accounts there is often not a document or other physical item that can be given to the creditor, it is not possible for a pledge over an account to satisfy the control requirement and it is not known if constructive control would be sufficient to satisfy this requirement. By constructive control, we mean the creditor will have contractual rights in respect of the account and the bank at which the account is maintained will acknowledge the pledge and the creditor's rights. Accounts that are evidenced by a certificate can be pledged since the certificate can be delivered to the creditor.

Update and trends

As discussed in question 8, Bank Indonesia recently issued BI Regulation 17, which requires cash and non-cash domestic transactions to use Indonesian rupiah, and Regulation 16/21 requires borrowers of offshore loans to comply with hedging, liquidity and credit rating requirements in certain instances. BI Regulation 17 became effective as of 31 March 2015.

In January 2015, the Minister of Transportation (MOT) issued MOT Regulation No. PM 10 of 2015 (PM 10/15), which is the second amendment of MOT Regulation No. PM 10 of 2014 (PM 10/14). PM 10/14 sets out those activities that may be conducted in Indonesian waters by foreign-flagged vessels and the procedure to be followed for a foreign vessel to obtain an exemption from Indonesia's cabotage requirements. A foreign-flag dispensation is called a Foreign Vessel Utilisation Permit (IPKA). Under PM 10/15 the validity period for an IPKA is now a maximum of one year. The regulation is silent as to whether it can be extended. Under PM 10/14, the IPKA was valid for six months and extendable. Further, PM 10/15 expanded the activities that could be conducted using foreign-flagged vessels so that now offshore support vessels are eligible to obtain an IPKA for a maximum period of one year (until the end of 2015), in addition to drilling rigs, oil and natural gas survey vessels, offshore construction vessels, dredgers, and vessels for salvage and underwater works. Toward the end of 2015, it will be necessary to ascertain the activities that foreign-flagged vessels

are entitled to conduct and the procedure to obtain an IPKA in 2016 and afterwards.

Historically, all vessels imported by a SIUPAL holder were granted VAT and article 22 income tax exemptions on the import of vessels. However, tax officials have recently been taking the view that only vessels engaged in the transportation of goods or people should be granted these exemptions while vessels involved in the provision of services should not. Further, the Tax Office is also looking into the services being performed by vessels owned by a SIUPAL holder to determine whether the services should be subject to a 1.2 per cent final tax or regular corporate tax. While it is clear that income earned on the transportation of goods and people will be subject to a 1.2 per cent final tax, it is uncertain whether the provision of other services will be taxed at this rate. The issue as to which vessels owned by SIUPAL holders should be granted tax exemptions and subject to a 1.2 per cent final tax is further complicated because the tax treatments are decided by local tax offices and the local offices do not share the same view regarding the granting of these exemptions and the use of the final tax regime. As a result, at present, there is a question as to whether vessels owned by a SIUPAL holder and involved in the provision of services other than the transportation of goods and people can be imported free of VAT and article 22 tax or at what rate their income will be taxed.

The FRO's current position is that it will not accept registration of FSDs over bank accounts or bank account receivables.

34 How are security interests in non-vessel collateral enforced?

Moveable assets subject to FSDs are enforced like a mortgage. The collateral can be sold privately if the borrower does not object; otherwise, they will need to be sold by the State Auction Office after the creditor has obtained a court order for the same.

35 How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Pledges of shares for vessel financings are created in the same manner as any other pledge. The pledge is documented by a pledge of share agreement or an FSD over the shares. Share pledges are perfected by registering the pledge in the relevant company's shareholder register. It is necessary to deliver physical share certificates to a pledgee. Bearer share certificates are allowed, but they are not common. Share pledges or share charges are common in Indonesia.

36 Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

There is no risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the company whose shares are pledged.

Tax considerations for vessel owners

37 Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Income earned by owners of Indonesian-flagged vessels who hold a Sea Transportation Company Business Licence (SIUPAL) is subject to 1.2 per cent final income tax, but see 'Update and trends'. If the vessel owner does not have a SIUPAL the vessel owner is subject to normal corporate income tax, with the current highest marginal rate being 25 per cent.

38 Is there an optional tonnage tax exempting vessel owners from tax on income?

There is no optional tonnage tax exempting vessel owners from tax on income.

39 What special tax incentives are available to shipowners registering vessels in your jurisdiction?

If the vessel owner holds a SIUPAL, the vessel owner may be able to obtain an exemption from value added tax (VAT) or article 22 income tax, or both,

due on the importation of a transportation or fishing vessel. Services rendered by certain national water transportation companies are also subject to VAT exemption.

40 Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

None, but see 'Update and trends'.

Insolvency and restructuring

41 Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

A scheme of reorganisation analogous to chapter 11 of the US Bankruptcy Code is the Suspension of Debt Payment Obligations (PKPU) proceeding, which is recognised in Indonesia's 2004 Bankruptcy Law and provides creditors and debtors a way to avoid liquidation bankruptcy. A PKPU gives a debtor the chance to prepare, negotiate and submit a composition plan to its creditors for their approval. The composition plan details how outstanding debts are to be restructured and typically provides, among other things, for rescheduled and extended payment terms, perhaps with a grace period, reduced interest rates and a waiver of penalties and overdue interest. Secured creditors are included in the composition plan process, however, they may reject the composition plan and be compensated in the amount of either the value of their security or the outstanding amount of their claim (whichever is lower). A ship mortgage cannot be foreclosed and the vessel encumbered by the mortgage cannot be sold before the PKPU process is completed.

42 Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

Indonesian courts do not recognise foreign court judgments because Indonesia has not entered into any treaty with any country concerning the enforceability of foreign court judgments. As a result, Indonesian courts will not recognise the rulings of a foreign court presiding over reorganisation or liquidation proceedings.

43 What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

There are three types of creditors under the Indonesian Bankruptcy Law: secured creditors, preferred creditors and unsecured creditors.

Secured creditors are those holding security interests over an insolvent company's assets. In a bankruptcy or liquidation, secured creditors may immediately execute the collateral and receive repayment of their loans, which they may also do in a PKPU proceeding if they object to the compensation plan. However, in 2014, the Constitutional Court revised

article 95(4) of the Manpower Law (Law No. 13 of 2003) and held that this article shall now read as follows:

The payment of outstanding wages of workers/labourers shall take precedence over all other types of creditors, including secured creditors' claims and claims of states' rights, auction houses and public institutions established by the Government, whereas the payment of other rights of workers/labourers shall take precedence over all claims, including claims of states' rights, auction houses, and public institutions established by the Government, except for claims by secured creditors.

As a result of this decision, the rights of secured creditors are now subordinated to employee wage claims, as the source of wage payments may in some cases require the sale of secured assets.

Thus, the order of priority among creditors, after the issuance of the Constitutional Court decision, is:

- tax and customs claims;
- employee wage claims;
- secured creditors (in the sense their collateral can be sold to pay wage claims);
- preferred creditors (among others, payment of other rights of workers/labourers); and
- unsecured creditors.

44 May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

A vessel owner may provide security on behalf of other related or unrelated companies. As stated in question 6, the approvals required under the AOA of the company providing security need to be complied with. However, other than for security being provided by a parent company to its subsidiaries, the granting of the security should be unanimously approved by shareholders, the board of directors and the board of commissioners of the granting company.

45 Is there a law of fraudulent transfer that permits a third party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Yes. The Indonesian Bankruptcy Law recognises the concept of fraudulent conveyance, or *actio pauliana*, under which a third party creditor may request the Indonesian Commercial Court to nullify and set aside any legal action of a debtor that has been declared bankrupt if such action was performed within one year prior to the bankruptcy declaration and caused loss to the creditor. Nullification can only be made if it can be proven that at the time the legal action was conducted the bankrupt debtor and the other parties involved in the action knew or should have known that such action would cause losses to the creditor.

46 How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Bankruptcy and PKPU proceedings are initiated in the Commercial Court. The only requirement to initiate either proceeding is that the party initiating the bankruptcy proceeding petition must prove the obligor has at least two creditors and that one of the debts is already due and has not been paid.

47 Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

While Indonesia has not adopted the ISDA Model Netting Act, the concept of netting is protected by general principles of law, provided the offset provisions of the Indonesian Civil Code (ICC) are satisfied. Article 1425 of the ICC provides that when there are two persons who are debtors to one another, a set-off may be made, as a result of which the mutual debts shall be cancelled. However, if the close-out or offset right is not secured, the offsetting party will be deemed an unsecured creditor. Before setting off any obligation with another, the parties should obtain tax advice.



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