

# Restructuring and Insolvency in Indonesia: Overview

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A Q&A guide to restructuring and insolvency law in Indonesia.

The Q&A gives a high level overview of the most common forms of security granted over immovable and movable property; creditors' and shareholders' ranking on a company's insolvency; mechanisms to secure unpaid debts; mandatory set-off of mutual debts on insolvency; state support for distressed businesses; rescue and insolvency procedures; stakeholders' roles; liability for an insolvent company's debts; setting aside an insolvent company's pre-insolvency transactions; carrying on business during insolvency; additional finance; multinational cases; and proposals for reform.

To compare answers across multiple jurisdictions, visit the Restructuring and Insolvency [Country Q&A Tool](#).

This Q&A is part of the global guide to restructuring and insolvency law. For a full list of jurisdictional Q&As visit [global.practicallaw.com/restructure-guide](https://global.practicallaw.com/restructure-guide).

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## Forms of Security

1. What are the most common forms of security granted over immovable and movable property? What formalities must the security documents, the secured creditor or the debtor comply with? What is the effect of non-compliance with these formalities?

### Immovable Property

Common forms of security and formalities. Immovable property is classified as follows:

- Immovable property by nature, such as land and everything on top of it.
- Immovable property by usage, such as factories and their products, houses and their interiors.
- Immovable property by law, that is, the right of use of immovable property (for example, right to use a property) and vessels with a gross weight of 20 cubic meters and above (*Article 314, Indonesian Commercial Code*).

(*Articles 506 to 508, Indonesian Civil Code*.)

The following forms of security can be placed over immovable property:

- Mortgage.
- Security right.

- Hypothec.
- Collateral right.

There are specific formalities to completely enforce each type of security. However, typically an encumbrance over immovable property requires a notarial deed to be drawn up and registered with the relevant government authorities for the security to be legally enforceable. For instance, a mortgage over land will be legally complete once the deed of mortgage encumbrance is registered with land officials and the security noted in the land certificate.

Effects of non-compliance. In general, failure to comply with the formalities will result in the security over immovable property being deemed as not fully consummated. It can then be rendered null and void.

However, there is case law where security over immovable property has been upheld even though the formalities for the security had not been fully complied with. Notwithstanding such case law, which is not binding on other cases, it is advisable to complete the formalities under the law in Indonesia to consummate the security.

### Movable Property

Common forms of security and formalities. Movable property is classified as follows:

- Movable property by nature, that is, animals and tangible assets.
- Movable property by usage, that is, cars and motorcycles.
- Movable property by law, that is, the right to use a movable property (for example, rights over receivables, and the right to use over receivables).

*(Articles 509 to 511, Indonesian Civil Code.)*

Typical securities over movable property include:

- A pledge.
- Fiduciary rights.

There is no specific formality for a pledge to be complete aside from the requirement for a pledge agreement. A pledge holder has the movable property in its possession, and the pledgor typically grants a power of attorney to execute the pledge if the debtor defaults. Specifically, a pledge of shares must be recorded in the share register maintained by the company where the shares were issued.

For a fiduciary right, the movable property will still be in the possession of the debtor. The right is formalised by a deed of fiduciary encumbrance, which is then registered with the Ministry of Law and Human Rights. Afterwards, a fiduciary certificate will be issued, which renders the fiduciary encumbrance complete.

Effects of non-compliance. As the pledge holder has the movable property in its possession, there is no other requirement for a pledge to be complete. Unless expressly provided in the pledge agreement, the creditor must auction the movable property to receive repayment. A pledged asset can be exempted from auction if the pledgor and the pledgee have agreed this in the pledge agreement.

Failure to obtain a fiduciary certificate would render the fiduciary right non-existent.

### Creditor and Contributory Ranking

2. Where do creditors and contributories rank on a debtor's insolvency?

There are the following types of creditors in a bankruptcy of a debtor:

- Preferred creditor, which ranks above secured creditor.
- Secured creditor, which is a creditor that holds security over specific property owned by the debtor.
- Unsecured creditor, which is a category including all other creditors.

*(Articles 1131 to 1138, Indonesian Civil Code, in conjunction with Law No. 40 of 2007 Regarding Limited Liability Companies of 16 August 2007 (Company Law); Law No. 37 of 2004 Regarding Bankruptcy and Suspension of Debt Payment Obligations of 18 October 2004 (Bankruptcy Law).)*

### Preferred Creditors

Preferred creditors rank first among creditors and get paid first from the proceeds of a bankruptcy. The preferred debts are:

- Employees' wages and payment for severance.
- Owed tax and government levies.
- Fees of the receiver/administrator.
- Fees of experts appointed by the supervisory judge.
- Costs of liquidation of the bankruptcy estate or costs incurred during the suspension of payments process.
- Post-bankruptcy/suspension of payments financing.
- Lease of the bankruptcy estate's house or offices.

### Secured Creditors

In relation to secured creditors, if they had already executed their right to take possession of the secured property prior to the bankruptcy decision, they can execute their rights over the property to recover their debt, even after the bankruptcy decision, as if the bankruptcy had not occurred.

Otherwise, the right of secured creditors to execute their right over the secured property is suspended for a maximum of 90 days as of the bankruptcy decision. During the suspension period, the receiver can use or sell the bankruptcy assets that are subject to a security interest in the framework of continuing the debtor's business, provided the receiver had already provided sufficient protection toward the interest of the secured creditor(s). The 90-day time frame ends by law if the bankruptcy proceeding ends earlier or at the time the insolvency period commences (that is, when a composition plan is not accepted, or the ratification of the composition plan is rejected and the debtor will therefore be liquidated to repay its debts).

Creditors whose rights have been suspended can submit a request to the receiver for the release of the suspension or to change the terms of the suspension. If the receiver rejects that request, the creditor can submit the same request to the

supervisory judge. Within one day after the receipt of the request, the supervisory judge will order the receiver to summon the creditor who submitted the request for a hearing and the supervisory judge will issue a decision no later than ten days after the hearing. The supervisory judge can decide to release or retain the suspension and/or confirm whether the creditor can execute its debt over the bankruptcy asset.

After determination of insolvency, a secured creditor has two months to execute its rights. After that period, the receiver can request the supervisory judge to permit the assets subject to the security to be sold by the receiver, without prejudice to the rights of the secured creditor to the sale proceeds.

## Unpaid Debts and Recovery

3. Can trade creditors use any mechanisms to secure unpaid debts? Are there any legal or practical limits on the operation of these mechanisms?

Unless the trade creditors have security for the payment of the goods being traded, they will be treated as concurrent unsecured creditors under the Bankruptcy Law (see [Question 2](#)). According to case law, trade creditors are mostly categorised as unsecured creditors unless the trade creditors hold a specific security.

4. Can creditors invoke any procedures (other than the formal rescue or insolvency procedures described in [Question 6](#) and [Question 7](#)) to recover their debt? Is there a mandatory set-off of mutual debts on insolvency?

Aside from the legal recourses available under the Bankruptcy Law, a creditor can always file a lawsuit to the civil court demanding the repayment of its debts.

There is no mandatory set-off of mutual debts under the Bankruptcy Law. In both procedures, creditors can set off sums owed by them to the debtor company against amounts that the debtor company owes to them. However, sums can only be set off in the bankruptcy procedure if the claim and debt either:

- Existed before the declaration of bankruptcy.
- Arose from transactions carried out with the bankrupt company before the declaration of bankruptcy.

Further, there is no requirement in Indonesia for the debts to be due and payable. However, there is also uncertainty as to whether the receiver in a bankruptcy or the administrator in a suspension of debt payments procedure must approve a set-off.

## State Support

5. Is state support for distressed businesses available?

In general, the government does not provide any support to private companies and/or individuals in distress. The only exception applies to banks, where distressed banks that may have a systemic effect may receive state support in the form of a bailout.

Banks that are members of the Indonesia Deposit Insurance Corporation (*Lembaga Penjamin Simpanan*) (LPS) will provide the support for banks in distress, subject to the decision of a government committee consisting of officials from Bank Indonesia (the central bank of Indonesia) and the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK).

There is a state-owned enterprise, PT Perusahaan Pengelola Aset, which provides services for distressed businesses in the form of management of the distressed business.

## Rescue and Insolvency Procedures

6. What are the main rescue/reorganisation procedures in your jurisdiction?

### Suspension of Debt Payment Obligations (PKPU)

**Objective.** PKPU allows debtors that are unable to pay (or are expected to be unable to pay) a debt that has fallen due and payable to pay their debts in the future, avoiding the need to declare bankruptcy. PKPU provides two stages, beginning with a temporary PKPU, which may be followed by a permanent PKPU.

**Substantive test.** PKPU can be granted under a court decision for which the debtor or creditor may apply if either the:

- Debtor cannot pay its debts.
- Debtor or creditor foresees the debtor's inability to pay its debts.

**Initiation.** PKPU can be initiated by either the debtor or creditor filing a petition for suspension with the court. However, the initiator may differ depending on the type of entity of the debtor:

- Bank Indonesia initiates when the debtor is a bank.
- The OJK, which regulates the Indonesian financial services industry, initiates when the debtor is a securities company, stock exchange, clearing and custodian institution, or settlement and depository institution.
- Minister of Finance initiates when the debtor is an insurance company, reinsurance company, pension fund, or state-owned enterprise engaged in a sector of public interest.

A suspension by way of filing a PKPU can also be initiated by the debtor in response to the creditor filing for a petition to declare bankruptcy.

Consent and approvals. Depending on the type of entity of the debtor, consent/approval may differ as follows:

- Limited liability company: debtor must obtain approval of its general meeting of shareholders.
- Individual: debtor must obtain the consent of their spouse, unless a prenuptial agreement exists.

Consent/approval is not required if the creditor petitions for the PKPU.

Supervision and control. A petition for suspension filed by the debtor requires a list of the nature and amount of the debtor's accounts receivables and debts, accompanied by sufficient evidence.

If the petition for suspension is filed by the creditor, during the hearing the debtor will present a list containing the nature and amounts of the debtor's accounts, receivables and debts, accompanied by sufficient evidence, and a composition plan, if any. A composition plan includes an offer to pay all or part of the debtor's debts to its creditors, discharging them of their obligation.

In the decision to grant a PKPU, the court will appoint a supervisory judge, along with an administrator who will, with the debtor, jointly manage the debtor's assets.

Protection from creditors. Throughout the process of suspension, the debtor cannot be forced to pay any debts.

Length of procedure. In cases where the creditor submits the petition for suspension, the court must summon the debtor no later than seven days before the first hearing.

The time required for the court to render the decision to grant/reject the suspension depends on the initiator:

- Creditor: 20 days after the petition is registered with the court clerk.
- Debtor: three days after the petition is registered with the court clerk.

Once granted by the Commercial Court, a suspension will last for a maximum of:

- Temporary PKPU: 45 days from the date the decision on the temporary PKPU is read out.
- Permanent PKPU: 270 days from the date the decision on the temporary PKPU is read out.

If the composition plan is not agreed on after 270 days from the date the decision on the temporary PKPU is read out, then the court must declare the debtor to be bankrupt.

Conclusion. A PKPU can be terminated if the composition plan for settlement is either approved or rejected by the creditors.

A PKPU can also be terminated at the request of the supervisory judge, a creditor, or the court if the:

- Debtor acts in bad faith during the suspension.
- Debtor attempts to prejudice its creditor.
- Debtor controls or manages assets without approval.
- Condition of the debtor no longer allows continuation of the PKPU.

- Condition of the debtor means it cannot be expected to satisfy its obligations.

If the composition plan is rejected, the administrator will inform the court through the supervisory judge to declare the debtor bankrupt. Once a composition plan is approved or rejected, the court will ratify the composition plan.

Suspension will expire once a decision on composition ratification becomes final and binding, and the administrator will announce the expiration in the *State Gazette of Indonesia* and at least two daily newspapers.

7. What are the main insolvency procedures in your jurisdiction?

## Bankruptcy

**Objective.** Bankruptcy is the general confiscation of all assets of a bankrupt debtor, which will be managed and liquidated by a receiver and supervised by a supervisory judge. The objective of bankruptcy is to satisfy the creditor's claim, by confiscating all of the bankrupt debtor's assets and placing them with a receiver who would then use the assets to repay the claims from the creditor.

**Initiation.** A petition can be filed by the debtor or at the request of a creditor through an advocate. A debtor will be declared bankrupt based on a Commercial Court decision. The public prosecutor can also file for a petition if the matter involves the public interest. Otherwise, specific entities require specific initiators:

- Bank Indonesia initiates the bankruptcy of a bank.
- The OJK initiates if the debtor is a securities company, stock exchange, clearing and custodian institution, or settlement and depository institution.
- Minister of Finance initiates when the debtor is an insurance or reinsurance company, pension fund, or state-owned enterprise engaged in a sector of public interest.

**Substantive tests.** A debtor will be declared bankrupt through a court decision if the debtor:

- Has two or more creditors.
- Fails to pay at least one debt that is due and payable.

A debtor will be insolvent by law if:

- In the verification meeting, there is no reconciliation proposal plan (composition plan).
- The composition plan is rejected.
- The composition plan is denied on the basis of a court decision.

**Consent and approvals.** If a debtor is married, the petition by the debtor can only be filed on approval of their spouse. This does not apply, however, if there is a pre-nuptial agreement for the separation of assets and/or liabilities. For legal entities, prior approval from the shareholders must be obtained before the debtor can file for bankruptcy. Consent/approval is not required if the creditor petitions for the bankruptcy.

Supervision and control. A bankrupt debtor will by law forfeit its right to control and manage its assets with the declaration of bankruptcy decision. The debtor cannot make any commitments paid using the bankruptcy assets. Any legal actions concerning the rights and obligations on bankruptcy assets will be filed by or against the receiver.

In the decision of the declaration of bankruptcy, a supervisory judge and a receiver will be appointed to supervise and control the assets.

Protection from creditors. Secured creditors can exercise rights as if no bankruptcy has occurred. However, their rights will be stayed for 90 days since the declaration of bankruptcy. The stay can end on earlier termination of bankruptcy or commencement of insolvency. Transactions that assign the debtor's assets are stayed after the bankruptcy petition is granted. If the transaction is deemed to be detrimental to the debtor's assets, the receiver may annul the transaction.

Length of procedure. The petition for a declaration of bankruptcy is submitted by the Registrar to the Chairman of the Commercial Court at the latest within two days from registration. The Commercial Court will study the petition and set a hearing date within three days, and the hearing will be held within 20 days from the registration of the petition. The proceeding can be postponed for a maximum of 25 days from registration on the request of the debtor, supported by sufficient evidence for the postponement to be granted. A decision on the petition will be rendered within a maximum of 60 days from the date the application is registered. Cassation must be filed directly to the Supreme Court within eight days from the date of the decision at the Commercial Court.

Conclusion. Bankruptcy can be terminated:

- Based on a court decision if the assets are not sufficient to cover the bankruptcy charge.
- Once the ratification of the draft composition plan becomes final and conclusive.
- Once all verified creditors are paid in full or the last distribution list becomes binding.

## Stakeholders' Roles

8. Which stakeholders have the most significant role in the outcome of a restructuring or insolvency procedure? Can stakeholders or commercial/policy issues influence the outcome of the procedure?

## Stakeholders

If the debtor is unable to pay debts, the following procedures can be used:

- Suspension of debt payments. If the debtor is temporarily unable to pay debts, the debtor can ask the court to grant a deferral of payment (see [Question 6](#)). The creditors play the most significant role in this process as they can approve the debt restructuring plan proposed by the debtor. Rejection of the composition plan by the creditors will result in the bankruptcy of the debtor.
- Bankruptcy. In the bankruptcy procedure, the receiver of the bankrupted debtor has the most significant role (see [Question 7](#)). In this scheme, the receiver takes over the bankrupted debtor and therefore has the legal capacity to manage the assets. This capacity includes various legal actions such as selling goods and assets, getting additional financing, setting aside previous transactions, running the business, and other legal actions to benefit and protect the

estate.

### Influence on Outcome of Procedure

The Bankruptcy Law does not confer special treatment or a higher level of protection on any particular party. However, for certain debtors, a bankruptcy or suspension of payments petition can only be filed by a specific institution (see [Question 7](#)).

Under the Indonesian Bankruptcy Law, certain creditors may also be prioritised in receiving payments from the bankruptcy estate. These creditors are called “preferred creditors” and include creditors with claims for:

- Fees of the receiver/administrator.
- Fees of experts appointed by the supervisory judge.
- Costs of liquidation of the bankruptcy estate or costs incurred during the suspension of payments process.
- Post-bankruptcy/suspension of payments financing.
- Lease of the bankrupt estate’s house or offices.
- Employees’ wages.

### Liability

9. Can a director, partner, parent entity (domestic or foreign) or other party be held liable for an insolvent debtor’s debts?

#### Director

Under Indonesian law, members of the board of directors can be personally liable for the bankruptcy of a company if the bankruptcy is due to their fault or negligence. Personal assets belonging to the members of the board of directors can be confiscated to settle the debts if the company’s assets are not enough to pay the debts. However, only people who have been members of the board of directors for at least five years before the bankruptcy can be held liable.

#### Partner

The liability of a partner during a bankruptcy depends of the legal personality of the company, as follows:

- In a partnership where the company has a legal body (limited liability) and the partners invest only in stocks, the partners are not personally liable for the bankruptcy, aside from the stocks they invest in that might be lost in the event of a bankruptcy.
- In a partnership where the company does not have a legal body, partners can be held liable, depending on the nature of their partnership.
- In a limited partnership or a CV, only active partners who directly manage the company’s business and are listed in the company’s articles of association can be held personally liable for a bankruptcy, whereas passive partners who only

provide loans or investments cannot be held personally liable.

- In an unlimited partnership or a firm, all the partners listed in the articles of association of the firm can be held personally liable and are jointly responsible in the event of a bankruptcy.

### Parent Entity (Domestic or Foreign)

A parent entity is a company that has a special relationship with a subsidiary company that occurs when:

- More than half of its shares are owned by the parent entity.
- More than half of the votes in the general meeting of shareholders are controlled by the parent entity.
- Control of the operation of the company is strongly influenced by the parent entity.

As a shareholder, the parent entity is not personally liable for the bankruptcy of a company. However, the parent entity can be held personally liable for the bankruptcy if any of the following applies:

- The company has not yet acquired the status of a legal entity.
- The shareholder uses the company in bad faith and for its own benefit.
- The shareholder is involved in unlawful acts committed by the company.
- The shareholder used the assets of the company in a way that caused the company's inability to pay its debts.
- The company has had only one shareholder for more than six months.

Both domestic and foreign entities could be held liable in the event of a bankruptcy as the law covers all assets belonging to the debtor, be it a foreign or local debtor. However, foreign assets can be hard to acquire as Indonesian court decisions on the status of bankruptcy do not apply in foreign jurisdictions. To acquire foreign assets, a request must be made to the foreign court.

### Other Party

A third party could be liable for a debtor's bankruptcy if the third party agrees to act as a guarantor of the debtor through an agreement. The person acting as a guarantor can be a natural person (personal guarantee) or another company (company guarantee). The guarantor's assets could only be confiscated if the debtor's assets are not sufficient to cover the debts, however, this stipulation can be set aside through an agreement.

### Setting Aside Transactions

10. Can an insolvent debtor's pre-insolvency transactions be set aside? If so, who can challenge these transactions, when and in what circumstances? Are third parties' rights affected?

The Indonesian Bankruptcy Law provides for avoidance action (*actio pauliana*), that is, a remedy that allows a creditor to

have an act declared ineffective, because it was carried out by a debtor with the purpose of diminishing its assets by passing them on to a third party. Under this principle, certain transactions entered into one year before the bankruptcy that damage the interests of the creditor can be set aside. The receiver of the bankruptcy estate has the right to appeal to the court to set aside such transactions and the creditor has the right to object to that appeal.

To set aside the transactions, the following requirements must be fulfilled:

- The *actio pauliana* must be in the interest of the bankruptcy estate.
- The debtor must be declared as bankrupt. This means that transactions cannot be set aside during a PKPU (see [Question 6](#)).
- The transaction is not required by a contractual obligation or the law. Examples of transactions that are not mandatory include the granting of security to one particular creditor, donations, or the payment of a debt that is not yet due and payable.
- The transaction harmed creditors' interests, for example, selling assets or goods below market value.
- The debtor and the contracting party had knowledge that their actions would harm other creditors. There is a presumption of knowledge where the following types of transaction are conducted less than one year before the bankruptcy:
  - a transaction for which the value received by the debtor is substantially less than the value of the asset sold;
  - the payment of a debt that is not yet due and payable;
  - a transaction between the debtor and related parties (that is, relatives or companies controlled by relatives, insiders and legal entities belonging to the same group); or
  - a transaction for the interest of the majority shareholder or its relation.
- A third party's right might be affected if a transaction is set aside.

The payment of a debt to a third party (creditor) that was due and payable can be set aside if it is shown that either:

- The recipient of the payment knew that, at the time of receipt, a bankruptcy petition had been submitted.
- Payment was the result of a consultation between the debtor and the creditor with the intention of preferring that creditor over other creditors. However, this requirement is only fulfilled if some measure of collusion between the parties is established.

A third party that has received donations or payments from the company must return their donations or payments to the receiver if such payments are a result of the transaction that is set aside.

## Carrying on Business During Insolvency

11. In what circumstances can a debtor continue to carry on business during rescue or insolvency proceedings? In particular, who has the authority to supervise or carry on the debtor's business during the process and what restrictions apply?

## Bankruptcy

Once the declaration of bankruptcy is granted, the commercial court appoints a supervisory judge to supervise the debtor, and a receiver. The receiver may continue the business of the bankrupt debtor, through the approval of a temporary creditors' committee. If a creditors' committee is not appointed, the approval can be obtained from the supervisory judge. A creditors' committee consists of three individuals chosen by the creditors to provide advice to the receiver.

## Suspension of Payment

During the suspension of payment, or PKPU, the commercial court on granting the suspension will appoint a supervisory judge and one or more administrator to jointly manage the debtor's assets with the debtor. The debtor requires approval from the administrator to take management and ownership of its assets. If the debtor takes control over its assets without approval, the suspension of payment will be terminated.

## Additional Finance

12. Can a debtor that is subject to insolvency proceedings obtain additional finance both as a legal and as a practical matter (for example, debtor-in-possession financing or equivalent)? Is special priority given to the repayment of this finance?

The receiver of a bankruptcy estate can apply for additional financing from a third party if the financing is done to increase the value of the bankrupt estate. However, if such financing requires the third party to take security over the company's assets through a pledge, fiduciary transfer, mortgage, hypothec, or another form of guarantee, the financing must be approved in advance by the supervisory judge. In such case, the receiver is personally liable if there is a loss incurred by the estate due to the financing and when that loss is caused by the receiver's fault or negligence.

## Multinational Cases

13. What are the rules that govern a local court's recognition of concurrent foreign restructuring or insolvency procedures for a local debtor? Are there any international treaties or EU legislation governing this situation? What are the procedures for foreign creditors to submit claims in a local restructuring or insolvency process?

## Recognition

The courts in Indonesia will not recognise foreign court judgments or proceedings concerning restructuring or insolvency procedures for a local debtor. Therefore if there are concurrent proceedings it is still necessary for foreign creditors to submit a bankruptcy petition to the Indonesian commercial court in the domicile of the debtor (see below, *Procedures for Foreign Creditors*).

## Concurrent Proceedings

The courts in Indonesia will not recognise foreign court judgments or proceedings concerning restructuring or insolvency procedures for a local debtor (see above, *Recognition*).

## International Treaties

Unlike the EU's comprehensive legal system, Indonesia's legal system does not have the flexibility that would allow the subject of Indonesian law to declare bankruptcy outside the jurisdiction of Indonesia. For example, Hungary allows its subjects to declare bankruptcy in the territory of another EU member state under Regulation 2015/848 on insolvency proceedings, as long as requirements set by the law are met. In addition, the New Hungarian Private International Law Act (Act XXVII of 2017) allows proceedings outside of EU jurisdictions, as long as the relevant legal requirements are met.

## Procedures for Foreign Creditors

In general, the Bankruptcy Law does not differentiate between insolvency procedures involving foreign creditors and those involving domestic creditors. If the creditor and debtor have an agreement to use Indonesian law in the event a dispute arises (such as bankruptcy), then the recognition of the creditor should not be disputed. In addition, there is no differentiation between creditors in the law itself. Therefore, a bankruptcy petition can be submitted by the creditor to the commercial court in the domicile of the debtor.

The recognition of concurrent foreign restructuring or insolvency procedure for a local debtor requires the following steps:

- Bankruptcy petition submitted to the Head of Court through the Registrar of the Court.
- Registrar of the Court delivers the submitted request to the Head of Court at the latest two days after the date of the registration of request. Within three days after the registration date the court will determine the hearing date.
- An examination hearing is conducted within 20 days after the registration date.
- The court must summon the debtor if the request for bankruptcy is submitted by a creditor, Public Prosecutor's Office, Bank Indonesia, the OJK, or the Ministry of Finance.
- The court may summon the creditor(s) if the bankruptcy petition is submitted voluntarily by the debtor and the requirement of having at least two creditors for bankruptcy to be granted has not been completed.
- The court summons is done by bailiff by registered express mail at the latest seven days before the first hearing commences.
- Court decision on the bankruptcy petition must be granted if there is proof that the bankruptcy requirements have been fulfilled and that decision must be pronounced within 60 days since its registration.
- The decision on the bankruptcy petition must contain the complete legal considerations on which the decision was based, as well as the opinion of the panel of judges, and must be pronounced in a hearing open to the public, and can be executed even if there is a legal remedy for such decision.

In the context of proceedings, Indonesian courts do not co-operate with foreign courts where there are ongoing proceedings in other jurisdictions, because, as mentioned above, Indonesia does not have the sufficient legal instruments to do so (see above, *International Treaties*).

## Reform

14. Are there any proposals for reform?

Bankruptcy proceedings have been used by parties to force debtors to repay a disputed loan. The problem with a bankruptcy proceeding is that the commercial court does not have time to properly examine the veracity of a creditor's claim and there have been cases where solvent debtors were declared bankrupt. In these cases, the debtor had the ability and liquidity to repay the amount being claimed by the creditor; but the amount was being disputed by the debtor and the creditor. The court only applied the minimum requirement for bankruptcy and this resulted in the solvent debtors having to face all other creditors whose loans were not yet due and payable.

To prevent such cases from happening, the Bankruptcy Law should impose a solvency test as a requirement for a debtor to be declared bankrupt. In this way, a debtor would only be declared bankrupt if it has satisfactorily been proven that the debtor needs to be taken into receivership to resolve its solvency issues.

The Indonesian Constitutional Court rendered Decision Number 23/PUU-XIX/2021 on December 21, 2021, declaring Article 239 (1) of the Bankruptcy Law to be unconstitutional. This decision makes it possible for a debtor to file a cassation against a bankruptcy decision, to the Supreme Court, after a failed PKPU. Prior to the Constitutional Court decision, a bankruptcy decision after a debtor failed to reach a settlement with its creditors in a PKPU was final, with no possible legal remedy.

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#### Recent Transactions/Activities

- Advising one of the largest real estate developers in Southeast Asia in a suspension of debt payment obligations (PKPU) plan involving their partner, an Indonesian property developer.
- Advising a global investment management company on a bankruptcy's petition of a major telecommunications

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- Advising one of the largest hospitality companies in Asia in a bankruptcy and suspension of debt payment obligations (PKPU) matter involving a manufacturing company in Indonesia.
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- Filing a voluntary bankruptcy petition of a glasses manufacturing company at the Commercial Court of Semarang due to the bankruptcy of its shareholders in France.
- Filing a bankruptcy petition against a construction services company at the Commercial Court of Central Jakarta.
- Involving in various court disputes concerning investments and loan claims.

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