Indonesia

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'With the rapid change in digital sector and post Covid-19, the landscape of Indonesian restructuring and insolvency regime is obviously evolving, and law reform becomes inevitable.'

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Overview of Indonesia procedures

NAME	TYPE	CONTROL	MORATORIUM	INITIATION
Bankruptcy	Liquidation	External administration	Automatic, broad	Company, creditors, OJK, the Minister of Finance, and the Attorney General Office
PKPU	Reorganisation	External administration	Automatic, broad	Company, creditors, OJK, the Minister of Finance, and the Attorney General Office

Cross-border insolvency

UNCITRAL Model Law	JIN Guidelines
X	X

Need to know

- Indonesian courts place a high degree of observance to formality compliance
- All foreign language documents submitted as part of a proof of claim must be translated into Indonesian language
- Debts must be converted into Indonesian Rupiah for the purposes of bankruptcy and PKPU proceedings
- Temporary moratorium on security enforcement applies throughout a PKPU proceeding, while a 90-day stay period applies in bankruptcy

Key Legislation

Bankruptcy Law

Company Law

Investment Law

Most Recent Law Reform

Law No.4 of 2023 on the Development and Strengthening of the Financial Sector

Government Regulation in lieu of Law No.2 of 2022 on Job Creation

Overview

Law No.37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations ("**Bankruptcy Law**") remains the main bankruptcy law in Indonesia. The Bankruptcy Law provides two restructuring/insolvency options which can be initiated by either the company or its creditors, or in certain sectors, the Central Bank, OJK, and the Minister of Finance:

- bankruptcy; and
- suspension of debt payment obligations (*Penundaan Kewajiban Pembayaran Utang* or "**PKPU**").

On 12 January 2023, the Government of the Republic of Indonesian enacted Law No.4 of 2023 on the Development and Strengthening of the Financial Sector ("**Financial Omnibus Law**"). The Financial Omnibus Law transfers the authority of the Central Bank to file restructuring/insolvency petitions against banks to OJK. It also expands OJK's authority to initiate restructuring/insolvency petitions for certain types of business activities, on which we will elaborate under Questions 1 and 2 below.

Bankruptcy and PKPU process are seen as a more efficient legal option if compared to the more time-consuming court litigation process. That said, debate remains in respect of whether the efficiency offered by bankruptcy/PKPU trumps the common concern that it lacks transparency.

The current restructuring framework in Indonesia is ripe for reform for the following reasons:

- criticisms regarding the lack of clarity, implementation, and the legal certainty of certain provisions of the Bankruptcy Law;
- arguments that the Bankruptcy Law provides too much leverage for creditors to put solvent companies into bankruptcy (that said, there are divided views on the matter, particularly given that the Bankruptcy Law favours debtor-initiated PKPU as opposed to creditor-initiated bankruptcy or PKPU);
- creditor concerns in relation to both the restructuring process and the difficulties they face in enforcing their securities and rights in Indonesian courts; and
- criticisms of the authority and role of the receiver/administrator, including the fees that they charge.

The long discussions about a potential new bankruptcy law have not resulted in the enactment of any new laws. During the pandemic, the Government (through the Coordinating Minister of Economic Affairs) pushed for a possible moratorium on PKPU and bankruptcy filings for as long as three years but this proposal never materialised.

Corporate reorganisation procedures

1. What are the main corporate reorganisation or rescue procedures?

Suspension of debt payment obligations (PKPU)

Overview

> PKPU is governed by the Bankruptcy Law and is the only formal restructuring process in Indonesia

The objective of PKPU proceedings is to provide the company with temporary relief to prepare, negotiate and submit a composition plan ("**Composition Plan**") to its creditors for their approval. The Composition Plan details how outstanding debts are to be restructured.

In more sophisticated restructurings, the company is also able to offer to its creditors debt buybacks, asset transfers and/or equity conversions. The Composition Plan must be approved by a majority of creditors and homologated by the Commercial Court. Approval from a majority of creditors means approval from: (i) more than 50% of the attending unsecured creditors that represent at least two thirds of the verified unsecured debts; and (ii) more than 50% of the attending secured creditors that represent at least two thirds of the verified secured debts. If the Composition Plan is agreed by a majority of creditors, the Commercial Court will ratify the Composition Plan so that the company can continue its business as usual as a going concern.

The first 45 days of the PKPU is referred to as the 'Temporary PKPU'. The next stage is referred to as the 'Fixed PKPU'. In total, the PKPU must be completed in 270 days or less, failing which the company will automatically be declared bankrupt.

During the PKPU period, the company's board of directors remains in control of the company's day-to-day business, although decisions that affect the company's assets require the approval of the administrator.

Initiation

A PKPU petition may be initiated by either the company or any of its creditors (whether domestic or foreign) in the relevant Commercial Court. The following considerations apply when submitting a petition:

- there are currently five Commercial Courts in Indonesia and the petitioner needs to ensure that the submission is made to the correct court having jurisdiction over the company; and
- under the Bankruptcy Law, the PKPU petition must be submitted by an Indonesian advocate, and both the PKPU petitioner and the advocate must sign the petition.

If the PKPU petition is voluntarily made by the company, it must include a list of the company's debts and receivables, the nature of such debts and receivables, and supporting evidence (eg underlying contracts and demand letters). A draft Composition Plan may also be attached to the petition but this is not mandatory. The company should also obtain the shareholders' approval that meets the quorum requirement under the company's articles of association or, if the articles of association do not mention quorum requirements for a bankruptcy petition, then provisions of Law No. 40 of 2007 regarding Company Law ("**Company Law**") will apply. Under the Company Law, a resolution at a general meeting of shareholders for a bankruptcy petition is valid if the meeting is attended by shareholders representing at least 75% of shares with valid voting rights and the resolution is approved by at least 75% of the total votes legally cast.

As mentioned in Overview above, the Financial Omnibus Law has expanded OJK's authority to initiate restructuring/insolvency petitions for certain types of business activities, as follows:

- banks;

- pension funds (previously falls under the Minister of Finance's authority);
- alternative market providers;
- depository and settlement institutions;
- investor protection fund providers;
- securities funding institutions;
- securities price valuation institutions;
- guarantee institutions;
- financing institutions;
- microfinance institutions and electronic system providers that facilitate the collection of public funds through the offering of securities;
- information technology-based joint funding service providers; and
- other financial services registered and supervised by OJK.

A panel of three Commercial Court judges will be established by the Chairman of the Commercial Court to review and decide on the petition. They must issue the decision in respect of the petition as follows: (i) if the PKPU petition is submitted by the company, within three days of registration of the petition; and (ii) if the PKPU petition is submitted by a creditor, within 20 days of registration of the petition. PKPU decisions are final and binding and cannot be appealed. However, the situation changed in 2021 when the Constitutional Court of Republic Indonesia issued Decision No.23/PUU-XIX/2021 dated 15 December 2021 that a PKPU decision is now subject to appeal to the Supreme Court. However, this is only permitted for creditor-filed PKPU and **not** debtor-filed PKPU.

There is no prerequisite to the initiation of PKPU by a creditor. However, if the PKPU is initiated by a creditor, it is generally good practice to send a demand letter to the company prior to commencing the PKPU.

Supervision and control

If the petition is granted by the Commercial Court, the panel of judges will appoint one or more administrators and a supervisory judge ("**Supervisory Judge**") to supervise the PKPU process.

Although the panel of judges will decide on the appointment of the administrator, both the company and the creditors have the right to nominate an administrator. In circumstances where the PKPU petition is submitted voluntarily by the company, it should be accompanied by a confirmation letter from the creditors confirming that they have no objection to the company's nominated administrator.

The administrator has broad authority over the management of the company and its assets. Without the consent of the administrator, the company is unable to undertake any actions that will impact the company's assets. The administrator also controls the review, acceptance or rejection of the proofs of claim submitted by the creditors, and the overall process of the PKPU (such as holding creditors' meetings and voting).

In complex restructurings, the creditors may file a request to the Supervisory Judge to establish a creditors' committee ("**Creditors' Committee**"). The Creditors' Committee is entitled to provide suggestions or advice to the administrator but it has no power to require the administrator to take its suggestions or advice.

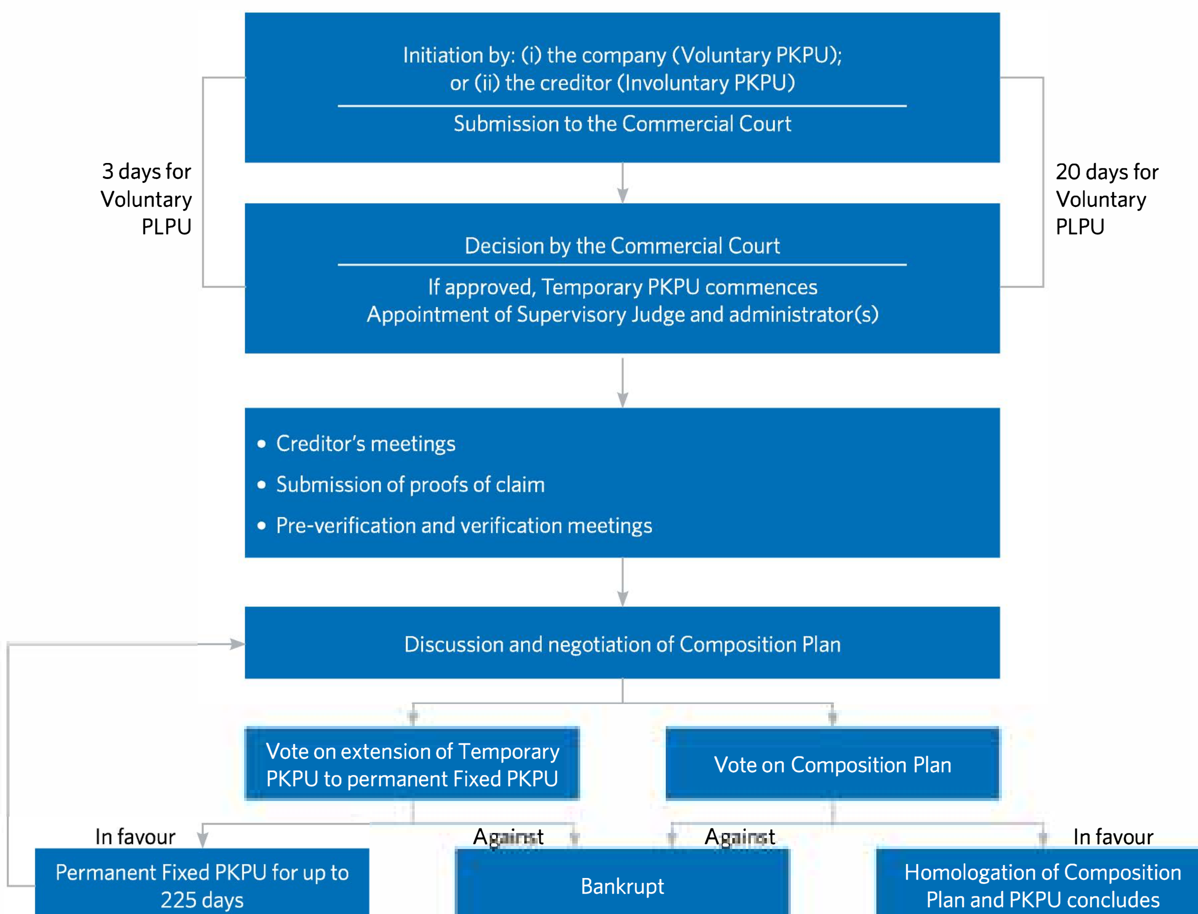
Subject to an approval from the Supervisory Judge, the administrator may be replaced, or an additional administrator may be appointed if there is a request from the company or a creditor.

Stages and timing

If the PKPU petition is approved, the administrator must announce the PKPU decision in the State Gazette and two newspapers. The newspaper announcements must include: (i) an invitation to all creditors of the company to register their claims; and (ii) an initial schedule for the Temporary PKPU ("**Initial Schedule**").

The Initial Schedule must include, among other things: (i) the schedule for the first creditors' meeting; (ii) the period within which evidence of claims can be submitted; (iii) details of the verification meeting, being a meeting at which the administrator (under the supervision of the Supervisory Judge) verifies the identities of the creditors and the validity of their claims; (iv) voting on the Composition Plan; and (v) details of the homologation hearing, at which the Commercial Court 'rubber stamps' the agreed Composition Plan, which then becomes legally binding on the company and its creditors ("**Homologation Hearing**").

An overview of the PKPU process and timeline is set out below:



Moratorium

Once the PKPU petition is granted, a moratorium will automatically apply for the duration of the PKPU process.

As a result, secured creditors are not allowed to enforce their securities and the company is protected from any demands for repayment by its creditors. Notwithstanding the moratorium, contracts requiring further performance by both parties (such as leases or sale of goods contracts) can be terminated by a counterparty if the administrator fails, within a reasonable time period, to determine a timeframe for completion of performance.

If any litigation or other legal proceeding is on foot or has commenced against the company, then to the extent that it relates to claims concerning verified debts of the company, it will typically be stayed. Judges and, if applicable, arbitral tribunals seated in Indonesia, have the discretion to stay proceedings when the PKPU process has commenced. In practice, judges and arbitrators typically respect any PKPU proceedings that are on foot and will exercise their discretion to stay or adjourn legal proceedings involving the company until the PKPU process is finalised. The position is unclear for arbitrations seated outside of Indonesia.

Ipso facto stay

The Bankruptcy Law does not adopt an ipso facto regime. While the debtor company may terminate a contract following the pronouncement of PKPU, and upon the administrator's approval, the Bankruptcy Law does not allow parties to modify the terms of the contract. Upon termination of the contract, the creditor has the right to file a claim to the administrator as part of the claim verification process.

Operation of the business

As noted in 'Supervision and control', during the PKPU process, the approval of the administrator is required for the company to conduct any activities related to the management or ownership of all or part of the company's assets. The board of directors will continue to be responsible for the day-to-day management of the company, while any significant transactions that will incur new debts or exposure for the company's assets will require an approval from the administrator.

The administrator does not have any personal liability for any debts or obligations incurred by the company during the PKPU period. However, the administrator will be personally liable for any loss to the company's assets caused by the administrator's negligence or fault when carrying out his or her duties.

The Bankruptcy Law does not give any priority treatment to debts and obligations incurred by the company during the PKPU process.

There are no assets that the company or administrator is prevented from dealing with during the PKPU process.

New money funding

The company can borrow further funds during the PKPU process, provided that doing so will increase the value of the company's assets and the approval of the administrator and the Supervisory Judge is obtained.

The loan may be secured by assets that are not already the subject of security. Except to the extent of any security, the new lender is not entitled to priority repayment ahead of any secured or unsecured creditor of the company. The administrator will not be liable for the repayment of funds to the new lender.

Business and asset sales

The business runs as usual during the PKPU period except the directors have only limited powers. For example, the directors are not allowed to acquire new loans or grant securities without an approval from the administrator.

As mentioned in 'Moratorium', secured creditors are not permitted to enforce their securities during the PKPU process.

The law does not expressly prohibit a sale of the business or assets by the company provided the administrator's approval is obtained. On a conservative reading of the PKPU provisions under the Bankruptcy Law, however, it is highly unlikely that, if tested in court, a company would be permitted to sell its business and assets.

Implementation of a reorganisation or restructuring 'plan'

The company is the only party entitled to propose a Composition Plan, either simultaneously with the initial PKPU application or thereafter.

A Composition Plan details how the company's outstanding debts are to be restructured and typically provides, among other things, for: (i) rescheduled and extended payment terms, sometimes with a grace period; (ii) reduced interest rates; (iii) a debt 'haircut'; and (iv) a waiver of penalties and overdue interest.

As set out in 'Overview', in more sophisticated restructurings, the company is also able to offer its creditors debt buybacks, asset transfers, and equity conversions. The Composition Plan is discussed at the creditors' meeting and must be approved by a majority of creditors (the approval thresholds are discussed in 'Overview'). To become binding, the approved Composition Plan must be homologated by a panel of judges of the Commercial Court at the Homologation Hearing. The homologated Composition Plan is legally binding on all creditors except any dissenting or absent secured creditors.

If the Composition Plan is not approved by a majority of creditors, the company may call for a second meeting at which another vote occurs ("**Second Meeting**"). The Second Meeting must be no later than eight days after the first creditors' meeting. If a majority of creditors fail to approve the Composition Plan at the Second Meeting, the Commercial Court will declare the company bankrupt and may appoint the same administrator (or a different person) to act as the receiver to commence the liquidation process.

If the Composition Plan is approved, the company must comply with the terms of the homologated Composition Plan. Under the Bankruptcy Law, creditors bound by the Composition Plan may petition the Commercial Court for relief in the event that the company does not comply with its terms. If the Commercial Court receives such a petition and finds in favour of the creditor, the Commercial Court may direct the company to rectify its default and comply with the terms of the Composition Plan within a maximum of 30 days. If the company fails to do so, the Commercial Court may annul the Composition Plan and put the company into bankruptcy.

Set off

The Indonesian Bankruptcy Law, the Civil Code, and the Financial Omnibus Law allow for set-off, provided that:

(a) the creditor's claim and the debtor's receivable have already existed before the pronouncement of the PKPU decision;

(b) the creditor's claim and the debtor's receivable relate to a transaction between the creditor and the debtor before the pronouncement of the PKPU decision;

(c) both the claim and the receivable are or can be valued with monies;

(d) both debts have already been due and payable; and

(e) it has been agreed upon in the agreement of the financial transactions in the financial markets.

Effect on stakeholders

Following the decision by the Commercial Court to approve a PKPU petition, and during the PKPU process, the company's board of directors remains in control of the company together with the administrator appointed by the Commercial Court. As set out in 'Supervision and control', the approval of the appointed administrator is required for the company to conduct any activities related to the management or ownership of all or a part of its assets.

Employees continue in their employment unless terminated by the company. The shareholders do not lose their powers over shares and are able to transfer them to a third party.

Contracts requiring further performance by both parties (such as leases or sale of goods contracts) can be terminated by a counterparty if the administrator fails, within a reasonable time, to determine a time frame for completion of performance.

Alternatively, a counterparty can apply to the court for an order of the Supervisory Judge compelling performance of the contract by a certain date.

During the PKPU process, the company cannot be forced to pay its outstanding debts and enforcement actions taken by any of the creditors against the company will be subject to the moratorium.

End of procedure

Generally, the PKPU process will conclude if either of the following occurs: (i) the Composition Plan submitted by the company is approved by a majority of the creditors and homologated by the panel of judges; (ii) as set out in 'Implementation of a reorganisation or restructuring plan', the

Composition Plan submitted by the company is rejected by the creditors or not ratified by the panel of judges; or (iii) the company does not submit any Composition Plan at all, in which case the company goes into bankruptcy.

Where the Composition Plan is homologated, the administrator will announce the expiration of the PKPU process in the State Gazette and in at least two newspapers. Once the PKPU expires, the moratorium is lifted and the company returns to operating on a normal basis. Consequently, the board of directors are no longer required to seek the approval of the administrator to manage the company.

The PKPU can also be concluded at the request of the Supervisory Judge, one or more creditors, or on the initiative of the panel of judges of the Commercial Court in the following circumstances:

- the company manages its assets in bad faith during the PKPU period;
- the company causes damage or attempts to cause damage to its creditors;
- the company, without the approval of the administrator, takes managerial or ownership action in respect of the whole or a part of its assets;
- the company fails to perform its obligations determined by the panel of judges under the PKPU decision, or fails to perform any actions required by the administrator for the benefit of the company's assets;
- the PKPU cannot be continued due to the condition of the company's assets; or
- the company cannot be expected to satisfy its obligations to creditors in a timely manner.

In any of the situations above, the administrator must submit a petition to the panel of judges for the conclusion of the PKPU. The panel of judges must hold a hearing and examine the petition within 10 days, and must render its decision no later than 10 days from the conclusion of the examination process. If the panel of judges grants the administrator's petition, the PKPU is concluded and the company will be declared bankrupt.

Corporate liquidation procedures

2. What are the main (insolvent) corporate liquidation procedures?

Bankruptcy

Overview

> Bankruptcy proceedings are the only insolvency procedure in Indonesia.

The object of bankruptcy proceedings is to impose a general attachment over the assets of the bankrupt company for the purpose of satisfying the claims of its creditors.

When a company is declared bankrupt by a judgment of the Commercial Court, it is put under the control of a court-appointed receiver (and the board of directors loses their powers to run the company).

Initiation

Under the Bankruptcy Law, a company who has more than one creditor and who has failed to pay in full one of its debts which is already due and payable, can be declared bankrupt by the Commercial Court upon the petition of: (i) the company itself (in the case of voluntary bankruptcy); or (ii) any of its creditors (whether domestic or foreign).

The public prosecutor can also submit a bankruptcy petition if it involves matters of public interest. Similar with PKPU, the initiation of bankruptcy petition against certain types of business activities is subject to the authority of OJK and the Minister of Finance. For example, a bankruptcy petition against a state-owned company carrying out business in the public interest can only be submitted by the Minister of Finance. A bankruptcy petition against certain business activities as set out under the Financial Omnibus Law (see 'Initiation' in Question 1 above) is subject to the OJK's authority. Prior to the enactment of the Financial Omnibus Law, OJK by virtue of its Regulation No. 21 of 2022 on Procedures for the Submission of Petitions for Bankruptcy Declarations and Suspension of Debt Payment Obligation for Securities Companies ("**POJK 21/2022**") asserted that a bankruptcy petition against a securities company can only be initiated by OJK.

The bankruptcy may also originate from the conclusion of the PKPU process (see 'End of procedure' in Question 1 above).

Similar to the PKPU petition, a petition for the voluntary bankruptcy of a company should include a shareholders' approval which satisfies quorum requirements pursuant to its articles of association or, if the articles of association do not mention the quorum for a bankruptcy petition, the Company Law. According to the Company Law, a resolution at a general meeting of shareholders for a bankruptcy petition is valid if the meeting is attended by shareholders representing at least 75% of shares with valid voting rights and the resolution is approved by at least 75% of the total votes legally cast.

Following submission of the bankruptcy petition, the court will summon the company and its creditors to attend a court hearing. The first hearing must be held no later than 20 days from the petition submission date, and the court must render its decision on the bankruptcy case no later than 60 days from the submission date. During the examination process, the petitioner must prove, to the satisfaction of the panel of judges, that the company has at least two creditors and at least one of the debts owing is due and payable.

If, based on the facts and evidence submitted, the panel of judges considers that all bankruptcy requirements are satisfied, it will declare the company bankrupt and appoint a receiver to manage the bankruptcy estate and a Supervisory Judge to supervise the bankruptcy process.

Supervision and control

Once the company is declared bankrupt, the directors of the company lose the power to manage the company. This power is automatically transferred to the court-appointed receiver who will manage the bankruptcy assets and settlement of the company's debts.

The Supervisory Judge supervises and controls the bankruptcy procedure, and the receiver must provide the Supervisory Judge with an accountability report at the end of the bankruptcy process.

The receiver is an independent, certified professional with the Indonesian Ministry of Law and Human Rights and is appointed by the Panel of Judges managing the bankruptcy process. The receiver has the power to undertake actions to manage and liquidate the assets of the company. The receiver must obtain the Supervisory Judge's prior approval to undertake certain actions. For example, an approval is required before the company incurs new debts, or otherwise undertakes any action that may adversely affect the company's ability to repay its debts.

While rare in practice, a Creditors' Committee can be established in a bankruptcy. If a Creditors' Committee is established, the receiver must provide the committee with any information it requests. The receiver must also seek advice from the Creditors' Committee before initiating or continuing any legal proceedings on behalf of the company (or defending itself against legal proceedings on matters other than creditor claims). If there is any discrepancy between the view of the receiver and the Creditors' Committee, the receiver must postpone the implementation of the proposed action for three days, during which time the Supervisory Judge must make the decision.

Stages and timing

Following a declaration of bankruptcy, the receiver is required to announce the bankruptcy decision in the State Gazette and two newspapers determined by the Supervisory Judge. The announcements should include the following matters: (i) name, address and business of the company; (ii) name of the Supervisory Judge; (iii) name, address and occupation of the receiver; (iv) venue and time of the first creditors' meeting; and (v) the period in which evidence of claims can be submitted.

After the creditors' claims submission period ends, the receiver must hold a verification meeting to identify creditors and assess the validity of their claims. Once verified, the receiver will issue a temporary list of claims, which contains the names and addresses of the creditors, the amount of each creditor's claim, and an explanation of the claims and whether the claims are admitted or denied. The creditors are given the opportunity to object to the list and then, after the Supervisory Judge approves it, it becomes the permanent list of claims.

After the permanent list of claims is finalised, the receiver will commence collecting in the company's assets. After the receiver concludes that all assets have been collected, the company's 'insolvency status' will be declared and the liquidation of assets can commence. Assets are typically realised by public auction. After the assets are realised, the receiver will issue a distribution list (which sets out each creditor's entitlement) and commence distributing proceeds to creditors. This process may be repeated if the receiver later discovers assets that were not included in the initial distribution list.

The receiver has broad powers to convene other meetings for specific purposes (eg settlement of remaining creditor claims) throughout the duration of the bankruptcy process.

The bankruptcy of the company (up until the assets are distributed and debts are repaid to the creditors) can take years as there is no statutorily mandated time frame.

Similar to the PKPU process, creditors and the company can settle the matter through a Composition Plan. The company may propose a restructuring and, if approved by a majority of the unsecured creditors, the Composition Plan will be homologated by the panel of judges. The required quorum to pass the Composition Plan is more than 50% of the unsecured creditors that represent at least two thirds of the total unsecured claims.

Homologation of the Composition Plan will conclude the bankruptcy status of the company, which can then continue business as usual as a going concern.

Moratorium

Once a bankruptcy declaration is made, there is a moratorium that requires all creditors' claims to be settled through the bankruptcy liquidation procedures.

The bankruptcy moratorium prohibits:

- litigation or legal proceedings against the company;
- all security enforcement by creditors during the first 90 days of the bankruptcy proceedings (unless the receiver or the Supervisory Judge consent). After the initial 90-day period has elapsed, the secured creditors must enforce their rights over the secured assets within two months. If a secured creditor fails to commence enforcement during that period, the receiver will take over the enforcement process for the secured creditor. However, this is not applicable for a bankruptcy process originating from the conclusion of the PKPU process (see 'End of procedure' in Question 1 above) – in that case, the secured creditors can directly enforce the security, without the requirement of a 90-day stay period; and
- termination of contracts, acceleration of debt and demands for payment (although contracts requiring further performance by both parties, such as leases or sale of goods contracts, can be terminated by a counterparty if the receiver fails, within a reasonable time, to determine a time frame for completion of performance).

Ipso facto stay

See 'Ipso facto stay' in Question 1 above.

Operation of the business

In practice, during the bankruptcy process, the business runs as usual under the close supervision of the receiver. There is no priority or special treatment for debts and obligations incurred during the bankruptcy proceedings. Such debts and obligations are afforded the same priority as other unsecured creditors. The receiver can grant security over the company's assets to secure funding (to the extent not already secured) but only with the approval of the Supervisory Judge, and only if doing so improves the company's capacity to repay its debts.

The receiver is not liable for debts incurred while operating the business, except when the receiver has acted negligently or fraudulently.

Upon a bankruptcy decision by the panel of judges, the company's assets are sequestered into bankruptcy assets. While the business continues operating, assets critical to the operation of the business cannot be sold or sequestered unless this is the last resort to repay creditors. However, in a bankruptcy, it is normal for business operations to cease and for all assets to be sold.

New money funding

The receiver may incur new loans and grant security over the company's assets (to the extent not already secured). However, this may only be done to increase the value of the company's assets. Prior to incurring any such loan, the receiver must obtain approval from the Supervisory Judge. Unless the loan is secured, the lender of additional funds will rank equally with other unsecured creditors of the company.

The receiver is not personally liable to the lender to repay such further borrowings.

Business and asset sales

Any sale of the company's assets by the receiver will be done by way of a public auction.

Prior to making any distributions of the proceeds of an auction (or private sale) to creditors, the receiver must prepare a report setting out his or her proposed plan of distributions for review by the creditors, which must be made in accordance with the statutory priority of distributions (ie the distribution list). The creditors can challenge the distribution list by filing an application with the Commercial Court.

If a secured creditor does not exercise its security rights within the two-month period commencing after the initial 90 days of the stay period (or earlier if authorised), the receiver will take over the enforcement process.

Effect on stakeholders

Contracts entered into by the company after the date of the bankruptcy order may only be paid from the bankruptcy assets if the contract benefits the company. Payment obligations arising out of contracts entered into by the company prior to the bankruptcy order must be settled through the bankruptcy process. Contracts requiring further performance by both parties (such as leases or sale of goods contracts) can be terminated by the counterparty if the receiver fails, within a reasonable time, to determine a time frame for completion of performance. Alternatively, a counterparty can apply to the Commercial Court for an order of the Supervisory Judge compelling performance by a certain date. If the counterparty terminates the contract, the counterparty can submit a claim as an unsecured creditor for any damages.

Upon bankruptcy, the receiver assumes control of the company and the directors lose their powers in respect of the management and control of the company.

Employees of the company may resign or have their employment terminated by the receiver. If the receiver terminates an employment contract, he or she must observe the notice period for dismissal as mutually agreed or in accordance with the prevailing manpower laws. Any unpaid salary and benefits must be submitted to the receiver and are treated as preferred debts.

Set off

See 'Set off' in Question 1 above.

End of procedure

Bankruptcy will be concluded if:

- there are insufficient assets to pay the receiver's fees and the bankruptcy costs;
- the company, after the declaration of bankruptcy, submits a Composition Plan that is approved by the creditors and homologated by the Commercial Court, and the court decision homologating the Composition Plan is final and binding; or
- all creditors' claims have been fully satisfied from the bankruptcy assets.

> The bankruptcy process does not always end in the dissolution of the company.

In practice, most liquidated companies are not dissolved, because value remains in the non-transferrable permits and licences which are necessary to operate the business.

Other key features

The Bankruptcy Law acknowledges that secured creditors have special rights to enforce security. However, as mentioned in the commentary under 'Moratorium', when a bankruptcy declaration is issued, such special rights will be affected by a moratorium for 90 days. This can be waived early if special leave is granted by the receiver and the Supervisory Judge.

Secured creditors are then given two months to commence enforcement of their securities. If a secured creditor fails to commence within this period, the receiver will take over the enforcement process.

Corporate receivership procedures

3. Is there a corporate receivership procedure for security enforcement?

No. Indonesian law does not provide for a corporate receivership procedure for security enforcement.

Special procedures

4. Are there insolvency procedures specific to particular industries?

While the insolvency regime discussed in this Guide is applicable to all industries, there are some industries for which bankruptcy or a PKPU petition can only be commenced by the public prosecutor, Bank Indonesia, the OJK or the Minister of Finance.

Security

5. What are the main types of security, and what assets can security be taken over?

Under Indonesian law, the most common types of security that can be granted are as follows:

Immovable property

NO	TYPE OF SECURITY	TYPE OF ASSETS	FORMALITY
1	Mortgage (*hak tanggungan*)	Land, buildings and/or other fixtures attached to land can be secured by a mortgage.	A mortgage can be created by entering into a formal deed (*Akta Pemberian Hak Tanggungan* – "**APHT**") (drafted in Indonesian) before the relevant local land deed official (*Pejabat Pembuat Akta Tanah* – "**PPAT**") where the land is located and registered. The APHT must then be registered by the holder of the mortgage with the National Land Office (*Badan Pertanahan Nasional* – "**BPN**") through the BPN online system within seven days of signing the deed. The mortgage is only effective once it has been properly registered. Different ranking mortgages in favour of different creditors can be created over the same land. A mortgage cannot be created over land that is to be acquired in the future.
2	Hypothec (*hipotik*)	A vessel with a gross weight of at least 20m³ that has been registered in the Indonesian Vessel Register (*Daftar Kapal Indonesia*) can be encumbered by hypothec.	A hypothec can be created by entering into a formal deed (*Grosse Akta Hipotik*) (drafted in Indonesian) before the Officer of the Vessel Registration and Title Transfer (*Pejabat Pendaftar dan Pencatat Balik Nama Kapal*) where the vessel is registered. The hypothec must be registered in the Master List of Vessels Register (*Daftar Induk Pendaftaran Kapal*). A vessel can be encumbered by more than one hypothec, ranked in order of their respective dates and numbers recorded on the deeds of hypothec. A hypothec cannot be created over a vessel to be acquired in the future.
3	Fiduciary security (*fidusia*)	Other immovable assets that cannot be secured by a mortgage (*hak tanggungan*) or hypothec (*hipotik*)can be secured by way of a fiduciary security. This includes: • Inventories; • Moveable assets • Insurance claims; and • Receivables.	A fiduciary security can be created by entering into a formal deed of fiduciary security (drafted in Indonesian) before a notary public in Indonesia. Within 30 days of its execution, the deed of fiduciary security must be registered by the notary public with the Fiduciary Registration Office through its online system. The fiduciary security will be effective only upon its registration.

Movable property

NO	TYPE OF SECURITY	TYPE OF ASSETS	FORMALITY
4	Pledge (*gadai*)	Unlisted shares	A pledge over unlisted shares is created by entering into a pledge of shares agreement. The pledge agreement can be signed in private or in notarial deed form before a notary public in Indonesia. Upon its execution, the pledge can be perfected by way of: (i) the pledgor delivering the original share certificates to the pledgee; (ii) the pledgor notifying the pledge of shares to the company who issued the pledged shares; and (iii) the company recording the pledge in the company's share register.

Movable property

NO	TYPE OF SECURITY	TYPE OF ASSETS	FORMALITY
		Listed shares	Similar to unlisted shares, a pledge over listed shares is created by entering into a pledge of shares agreement. The pledge agreement can be signed in private or in notarial deed form before a notary public in Indonesia. Upon its execution, the pledge can be perfected by way of: (i) the pledgor notifying the pledge of shares to the company who issued the pledged shares and the relevant share registrar which keeps the company's share register; (ii) the pledgor and/or the pledgee instructing the custodian bank, on which the shares are deposited, to freeze the securities account or the shares deposited in the securities account through an online system with the Indonesian Central Securities Custodian (*Kustodian Sentral Efek Indonesia* – "**KSEI**"), namely C-BEST; and (iii) obtaining a confirmation from the custodian bank, as account holder, that the securities account or shares in the securities account have been frozen.
		Money deposited in bank accounts	A pledge over money deposited into bank accounts is created by entering into a pledge with respect to a bank account agreement. The pledge agreement can be signed in private or in notarial deed form before a notary public in Indonesia. Upon its execution, the pledge can be perfected by way of the pledgor notifying the account bank of the pledge over money deposited in the bank account. Receipt of the notification is deemed as the transfer of control over the pledged accounts from the pledgor to the pledgee.

6. Is it possible to take floating or general security over all of the present and after acquired property of a company (and is this common)?

At the outset, all assets of the debtor (save for those that have been secured specifically for the benefit of a particular secured creditor) are deemed as general security for its creditors. There is no concept of floating security in Indonesia.

Security enforcement

7. What are the main methods of enforcing security?

Security interests are enforced by selling the secured property through public auctions or private sales.

Public auction

For most security types, public auctions can technically be conducted without a court judgment or order. However, in practice, an Indonesian court judgment or order is required since the State Auction Office (*Kantor Pelayanan Kekayaan Negara dan Lelang* – "**KPKNL**"), and even a private auction house, will most likely refuse to conduct a public auction without a court judgment or order. Another key element before conducting a public auction is an appraisal report made by an independent appraiser.

Listed shares can be sold in the market with the involvement of two brokers. No court order is required, provided there is a power of attorney to dispose of the shares, which is usually given when a pledge is created. However, there have been instances where the registrar of the listed shares was reluctant to transfer shares to a purchaser due to a potential claim if the transfer was contested in an Indonesian court by the owner of the shares, causing a delay in the transfer process.

Private sale

Generally, a private sale is only possible if:

- it is consented to by the company after the debt is due and the company is in default; or
- the company agrees to the sale by being a party to a sale and purchase agreement (voluntary sale).

Especially for mortgages, the law allows for a private sale if a higher sale price can be achieved for the benefit of the parties. Therefore, on default, the mortgagor and the mortgagee must agree to a private sale. The proceeds will be used to pay the outstanding debt.

For mortgages and fiduciary transfers or assignments, a private sale can only be conducted:

- after the expiry of one month from written notification of the intended sale to interested parties and the publication of the written notice in at least two daily newspapers circulated in the area where the assets are located;
- where no third party has filed any objection to the private sale (the law is unclear as to who these third parties may be, although it is safe to assume that they at least include the company's other creditors); and
- in the event of bankruptcy, upon approval from the Supervisory Judge, where a public auction is not achievable.

8. With respect to share security, is it possible for the secured creditor or an appointee to exercise the voting power of the shares?

Typically, the share pledge agreement will provide the pledgee with an irrevocable power of attorney to vote over the pledged shares. The irrevocable power of attorney should grant the pledgee the power to attend any general meeting of shareholders to vote on, and sign, any resolutions on behalf of the pledgor, if the company fails to pay its outstanding debt for the purpose of enforcement of the pledged shares.

The power of attorney will, by its terms, be irrevocable. However, pursuant to the Indonesian Civil Code ("**ICC**"), all powers of attorney are revocable. It is unclear whether an express waiver of this provision of the ICC (ie in the power of attorney itself) will have any legal effect. Furthermore, shareholder's rights are embedded in the specific shareholder. Hence, a power of attorney granting a right to a third party to vote on, and sign, any resolution on behalf of the pledgor is unlikely to be effective if the actual shareholder appears at a meeting of shareholders and exercises its rights as shareholder.

Trade and unsecured creditors

9. What forms of security or quasi-security are asserted by trade creditors or suppliers?

Quasi-security is available in Indonesia on a contractual basis. However, lenders normally prefer to use the available forms of security (see our commentary under Question 5). Retention is not commonly used as security although the ICC does grant rights to certain creditors to retain title to goods.

10. What are the main remedies and enforcement actions available to unsecured creditors for unpaid debts?

The main remedies available to unsecured creditors are: (1) filing a claim with the relevant court against the debtor; (2) commencing arbitration to seek an award for repayment of unpaid debts; or (3) filing a PKPU or bankruptcy petition to the Commercial Court. We have also seen criminal complaints made to 'enforce' debt repayment.

Insolvency distributions and priorities

11. When are distributions made to secured and unsecured creditors in reorganisations and liquidations?

There are no distributions made under the PKPU process, given that the objective of that process is to restructure the debts and keep the company operating as a going concern.

Making selective payments to creditors with respect to the pre-PKPU debts are prohibited in a PKPU process. However, certain payments are permitted if they are made for the purpose of keeping the company's business running during the PKPU process. It follows that payments are generally only made after the PKPU process is completed, and in accordance with the Composition Plan.

In bankruptcy, distributions are made by the receiver after the sale of assets of the company in accordance with the statutory priorities (discussed below in response to Question 12). Multiple distributions may be made over the course of bankruptcy proceedings, particularly when further assets are located and sold. In each distribution, the receiver must make distributions according to the court-approved distribution list.

12. What is the priority regime for distributions in an insolvency?

In bankruptcy proceedings, ranking of creditors is as follows:

- **Preferred creditors *(kreditur preferen)***: Preferred creditors are entitled to receive payment in full from the bankruptcy estate and will have a priority claim on the proceeds from the sale of movable and immovable assets of the company that are not secured assets. Preferred claims include tax claims and post-bankruptcy or suspension of debt payment claims, such as: (i) fees of the receiver or administrator; (ii) fees of experts appointed by the Supervisory Judge; (iii) costs of the liquidation of the bankruptcy estate or costs incurred during the PKPU process; (iv) post-bankruptcy or suspension of payments financing; (v) leases of the bankrupt party's house or offices; and (vi) employees' salaries.
- **Secured creditors *(kreditur separatis)***: These are the creditors holding security rights over some or all of the assets of the company. Secured creditors will receive payment from the sale of secured assets (ie the net amount after deductions for tax, non-tax state revenues (for public auctions), a receiver's fee (if a sale is undertaken by a receiver) and other applicable fees).
- **Unsecured creditors *(kreditur konkuren)***: Ranking of unsecured creditors is as follows: (i) specific statutory preferred creditors whose preference relates only to specific assets; (ii) general statutory priority creditors; and (iii) non-preferred unsecured creditors.
- **Shareholders**: Generally, the company's shareholders rank behind all other creditors in the distribution of the proceeds of the bankruptcy assets. If there are any remaining assets after distribution to other creditors, the distribution to shareholders is proportional to the shares that they hold in the company.

13. Are there any classes of unsecured creditors that have preferential treatment in a reorganisation or liquidation?

Yes, see our commentary under Question 12.

Setting aside pre-insolvency transactions

14. What transactions can be set aside in a liquidation or reorganisation?

Transactions entered into before the bankruptcy declaration that favour one creditor over other creditors may be set aside under the claw-back (*actio pauliana*) principles set out in the Bankruptcy Law to the extent that those transactions occurred one year before the pronouncement of the bankruptcy decision. The Bankruptcy Law enables the receiver to submit a claw-back petition to the Commercial Court having jurisdiction over the company. For a pre-bankruptcy transaction to be set aside, all of the following requirements must be met:

- **The transaction was made on a voluntary basis**: This means the transaction was not mandatory based on a specific agreement and/or laws.
- **The transaction imposed a greater obligation on the company compared to the counterparty's obligation**: Examples include: (i) granting of security to one particular creditor; and (ii) payment of a debt that is not yet due and payable.

- **The transaction harmed creditors' interests**: This includes most situations where the bankrupt estate would have been better off if the transaction had not been entered into, including: (i) sale of goods below their fair market value; or (ii) transactions resulting in an increase in the company's liabilities (eg the granting of a guarantee or other security by a subsidiary for the debt of its parent company).
- **The company and the contracting party had knowledge of the harm caused to other creditors**: Knowledge of harm to other creditors is presumed in a number of circumstances. Generally, there is a rebuttable presumption of knowledge where the following categories of transaction are performed less than one year before the bankruptcy: (i) a transaction for which the value received by the company is substantially less than the value of the asset sold; (ii) payment of a debt that is not yet due and payable, or granting security for such debt; (iii) a transaction between the company and related parties (that is, related companies or companies controlled by related companies, insiders and legal entities belonging to the same group); and (iv) gifts or donations.

The payment of a debt that was due and payable can also 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; or
- payment was the result of a consultation between the company and the creditor with the intention of preferring that creditor over other creditors. It is generally believed that this requirement is only fulfilled if some measure of collusion between the parties is established.

15. Is there a 'suspect period' prior to formal insolvency during which transactions may be set aside?

Yes, as mentioned under Question 14, the Bankruptcy Law grants the receiver one year in which to submit a claw-back petition to the Commercial Court having jurisdiction over the company.

The ICC also provides a general 'set aside' clause outside of bankruptcy which allows a creditor to file for the annulment of actions of the company which have caused damage to its creditors, provided it can be proven that both the company and the third party were aware of that result. A statute of limitations is applicable and such an 'unlawful act claim' can be commenced at any time in the 30-year period after the action is taken.

Director liability and compulsory filings

16. Are there circumstances where companies are required to commence insolvency proceedings? What are the consequences of a failure to do so?

Under the Company Law, a mandatory bankruptcy can occur if the company's liquidator in a solvent liquidation is of the view that the company's assets are not sufficient to pay the outstanding debts of the company. In these circumstances, the liquidator is legally required to commence the bankruptcy process of the company by filing a bankruptcy petition with the court. If the bankruptcy petition is accepted by the court, a different person to the liquidator in the solvent liquidation will be appointed as the receiver.

17. Can directors or management be subject to any civil or criminal liability for trading while insolvent or other analogous concepts?

The Company Law requires members of the board of commissioners and board of directors to perform their duties in good faith, prudently and responsibly in the interests of the company, and in accordance with its purpose and objectives. Each member of the board of commissioners and board of directors who is at fault or negligent in performing his or her duties is personally liable for any of the resulting losses or bankruptcy of the company.

A director or commissioner is not liable for the company's losses or bankruptcy if he or she can prove that:

- the losses or bankruptcy are not attributable to his or her fault or negligence;
- he or she managed the company in good faith, prudently with full responsibility for the benefit of the company and in accordance with the company's purposes and objectives;
- he or she had no conflict of interest either directly or indirectly in the management of the company; and
- he or she took all necessary actions to prevent the bankruptcy.

The Company Law further provides that where a bankruptcy occurs due to the fault or negligence of the board of directors and the company's assets are not sufficient to pay all of the company's obligations, each member of the board of directors is jointly and severally liable for all obligations that remain unpaid from the bankruptcy estate. This personal liability applies to board members who were at fault or negligent and who served on the board of directors in the five year period before the declaration of bankruptcy.

Pursuant to the Indonesian Penal Code, a director or commissioner who is at fault or negligent in performing his or her duties may also be imprisoned for a minimum of 16 months up to a maximum of seven years.

18. Do directors owe any duties to creditors once a company is insolvent or in financial distress?

Unlike certain other jurisdictions, as a general rule under the Company Law, the directors owe their respective fiduciary duties to the shareholders and not to the creditors of the company. However, if a bankruptcy occurs due to the fault or negligence of the directors and the company's assets are insufficient to settle all of the company's liabilities, then each director will be jointly responsible for the outstanding liabilities of the bankruptcy assets, which indirectly may benefit creditors.

Lender liability

19. Is there a concept of 'shadow directorship' that can lead to creditors becoming liable for actions of the company or the directors?

There is no concept of 'shadow directorship' under Indonesian law.

20. Are there any other key liability risks for creditors to consider when engaging with companies and directors in pre-insolvency restructuring negotiations?

Creditors should be aware of the risks associated with transactions which may be set aside in the event of bankruptcy. See our commentary under Question 14.

Credit bidding

21. Is credit bidding possible?

Strictly speaking, credit bidding is not possible under Indonesian law because security holders are generally prohibited from acquiring the secured assets upon an event of default, insolvency, reorganisation or security enforcement sale process.

22. Are there any rules regarding 'self-dealing' that restrict the ability to credit bid?

Yes, see our commentary under Question 21 above.

Pre-packaged sales/reorganisations

23. Are pre-pack sales or reorganisations permitted or usual?

Pre-pack sales or reorganisations are not unusual in practice, although they are not formally regulated by the Bankruptcy Law.

24. Is it possible for creditors and the company to pre-agree a restructuring prior to commencing a formal reorganisation process?

Yes, there is no prohibition under Indonesian law to agree a reorganisation or restructuring prior to a formal reorganisation process. This approach is, however, rarely used in practice, since dealing and obtaining the agreement of all creditors in complex financial distress scenarios is difficult.

Debt trading

25. Is it common for the debt of distressed companies to be traded?

Yes, it is quite common.

26. Are there any legal or process restrictions on who can acquire the debt of corporate borrowers?

In general, there are no legal or process restrictions on who can acquire the debt of corporate borrowers. However, specific rules may apply to specific industries. As an example, Bank Indonesia and OJK may impose restrictions on Indonesian banks acquiring the debt of corporate borrowers (eg convertible bonds).

Debt for equity swaps

27. What process is required for a debt for equity swap outside a formal reorganisation procedure?

Non-public Companies

The Company Law provides that the issuance of new shares (including for a debt for equity swap transaction) by non-public companies in Indonesia must be approved by the shareholders at the general meeting of shareholders.

The shareholders' resolution approving such issuance of new shares for a debt for equity swap transaction will be deemed valid provided the resolution satisfies the voting quorum requirement, and the relevant general meeting of shareholders is convened in accordance with the relevant requirements for the meeting (eg timeline, notice, announcement and quorum of attendance), as set forth in the Company Law and/or the articles of association. The shareholders' approval is required irrespective of the number of shares to be issued upon the conversion of such debt into equity.

Upon the issuance of new shares, the company must announce the debt for equity swap transaction in at least two daily newspapers circulated in the area where the company is domiciled and nationwide.

Public Companies

In addition to the abovementioned requirements, public companies also need to adhere to specific requirements as set out in OJK Regulation No.32/POJK.04/2015 on Capital Increase for Public Companies with Pre-emptive Rights as amended by OJK Regulation No.14/POJK.04/2019 on the amendment to OJK Regulation No.32/POJK.04/2015 on Capital Increase for Public Companies with Pre-emptive Rights ("**POJK 14/2019**") and OJK Regulation No.15/POJK.04/2020 regarding Plan and Organisation of General Meeting of Shareholders of Public Companies ("**POJK 15/2020**").

If the issuance of shares to creditors as part of a debt for equity swap transaction is conducted for the purpose of improving the financial condition of the relevant public company which meets certain criteria under POJK 14/2019, then it must be approved by the shareholders at the general meeting of shareholders. If the issuance of shares to creditors is conducted for the purpose other than for improving the financial condition of the relevant company, then it must be approved at the general meeting of independent shareholders.

The general meeting of shareholders (including independent shareholders) of public companies must be convened in accordance with the specific requirements as set forth in POJK 15/2020, particularly with regard to notices, announcements, invitations, timing (ie the meeting is required to be convened within at least 45 days) as well as quorum of attendance and voting.

In addition to the announcement requirement for non-public companies as discussed above, the issuance of shares for a debt for equity swap transaction must be also announced to the public no later than the day of announcement of the shareholders' meeting to approve such issuance (ie approximately 35 calendar days prior to the meeting). This announcement must at least include information as set forth in POJK 14/2019, including on the history of the loan and use of proceeds from such loan.

28. To what extent can a debt for equity swap be implemented without such processes in a reorganisation procedure?

The process and consents as referred to in Question 27 generally apply to all debt for equity swaps. There is no material difference in the requirement for obtaining shareholders' approval for conversion of debt to equity in a debt reorganisation between a formal reorganisation process and an informal (ie mutually agreed) debt for equity swap.

29. Are there any foreign ownership restrictions on companies or other assets?

Yes, direct foreign investments and foreign ownership over land are subject to certain prohibitions.

With respect to land, foreign individuals are prohibited to hold *Hak Milik*, a type of land right that is granted only to individual owners rather than corporations and gives such owners a perpetual right to hold the land. For manufacturing, agriculture or other business activities, foreign parties are permitted to hold *Hak Guna Bangunan* (the right to construct buildings on land that is not owned by the person or entity constructing those buildings) and *Hak Guna Usaha* (the right to work on land which is directly controlled by the Indonesian state), as relevant, but it must be done through an Indonesian-incorporated entity established by the foreign parties.

When setting up a company, foreign parties need to be aware that there are prohibitions and limitations in respect of foreign shareholding. These generally apply to certain business activities, rather than acting as a blanket prohibition or restriction on foreign shareholders. In addition, there are also conditions that may be applied to certain business activities, such as a requirement to cooperate with cooperatives, micro, small medium-scale Indonesian entrepreneurs ("**CMSMEs**") or a requirement to meet certain business operation thresholds (eg minimum floor size).

The prohibitions, restrictions and conditions as discussed above are set out in Presidential Regulation No.10 of 2021 on Investment Business Fields as amended by Presidential Regulation No. 49 of 2021 ("**Investment List**"), which provides the lists of business activities that are prioritised, reserved for CMSMEs and open to foreign investment subject to certain restrictions. As a coordinating government agency for investment, the Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*), also known as the Ministry of Investment (*Kementerian Investasi*), provides regular updates on the Investment List on its website: https://oss.go.id/. The Investment List needs to be read in conjunction with (i) Law No. 25 of 2007 on Investment ("**Investment Law**") as amended by Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"), and lastly amended by the Government Regulation in lieu of Law No. 2 of 2022 on Job Creation ("**Perppu 2/2022**") and (ii) the 2020 Indonesian Standard Business Classification Code (*Klasifikasi Baku Lapangan Usaha Indonesia* or "**KBLI**").

Perppu 2/2022 was recently issued by the Government of the Republic of Indonesia on 30 December 2022 as a response to the Constitutional Court of Republic of Indonesia Decision No. 91/PUU-XVIII/2020 dated 25 November 2021 ("**Constitutional Decision 91/2020**"). Constitutional Decision 91/2020 declared that the Job Creation Law is conditionally unconstitutional and ordered that the Government of the Republic of Indonesia should rectify certain aspects concerning the formation of the Job Creation Law within a 2-year period since Constitutional Decision 91/2020 was read. If the Government fails to do so, the Constitutional Court will permanently deem the Job Creation Law unconstitutional, and it will lose all of its binding power. It is anticipated that Perppu 2/2022 will be approved by the People's Representative Council in March 2023; failing which Perppu 2/2022 should be revoked and declared invalid.

In addition to the Investment List, the relevant supervising authorities are also able to impose restrictions and conditions on direct foreign investments in certain sectors, such as banking and finance, insurance, upstream oil and gas and extraction. These may include requirements on minimum capital of the company or specific qualifications that a shareholder of the company must have.

Informal financial restructurings and work outs

30. Are informal financial restructurings of distressed companies common?

Yes, it is common for financial restructurings to be agreed outside the formal process and without court involvement. Restructuring which is carried out informally is subject to general contract law under the ICC. The disadvantage to an informal restructuring process is that the debtor is unable to take advantage of the features provided by court-supervised restructuring, including the temporary moratorium on security enforcement which applies throughout a PKPU proceeding and the 90-day stay period which applies in bankruptcy.

Cross border insolvency

31. Has the UNCITRAL Model Law been adopted? Are there any significant modifications to its application?

No, the UNCITRAL Model Law on Cross Border Insolvency has not been adopted in Indonesia.

32. Have the courts adopted the JIN cross-border cooperation guidelines?

No, Indonesia has not adopted the JIN cross-border cooperation guidelines.

33. Are there any other grounds upon which assistance or recognition can be granted to foreign insolvency processes?

No international treaty has been ratified to allow Indonesian courts to recognise the restructuring or insolvency proceedings (and their decisions) commenced in other jurisdiction. Similarly, there is no formal regulation under Indonesian law upon which assistance or recognition can be granted to foreign insolvency processes.

Recent trends and developments

34. Will courts in Indonesia generally recognise the effectiveness of a compromise of debt effected under an insolvency or restructuring process that occurs in the same jurisdiction as the governing law of that debt obligation?

In short, no. Foreign court judgments are not automatically enforceable in Indonesia and therefore a debtor or creditor seeking recognition of a foreign court decision on insolvency or restructuring process would have to file a separate petition to re-litigate the case in Indonesia.

35. Describe any recent trends or developments in Indonesia

15 December 2021 marked a significant change to the Indonesian restructuring landscape. The Constitutional Court issued an important decision on that day with respect to a review of Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Law. The petitioner argued that those provisions, which provide that there is no legal remedy for a

PKPU decision issued by the Commercial Court and that a PKPU decision is final and binding, are unconstitutional and therefore null and void. The Constitutional Court accepted the petitioner's claim. As a result, the parties to a PKPU decision can now appeal a PKPU decision to the Supreme Court provided the following circumstances apply:

- the PKPU is filed by creditor, and
- the Composition Plan offered by the debtor is rejected by the majority of creditors.

Law reform

36. Is there any anticipated insolvency, restructuring or security law reform in Indonesia?

There have been many discussions to amend or replace the Bankruptcy Law in recent years. Common criticisms of the Bankruptcy Law concern three main issues: lack of transparency of the process; inconsistent application owing to a lack of binding precedents under Indonesian law (where a lower court can make a ruling that is different to prior rulings of that court and of higher courts); and a lack of detail in the Bankruptcy Law itself. The discussion about a possible new Bankruptcy Law, however, remains a proposal.

COVID-19 measures

37. Are any temporary changes to insolvency or restructuring law to address the COVID-19 crisis still in effect in Indonesia? If so, what are they?

Law No.2 of 2020

Law No. 2 of 2020 regarding Promulgation of Government Regulation in lieu of Law (*Perppu*) No.1 of 2020 on Policies on State Finances and Financial System Stability for the Handling of the COVID-19 Pandemic and/or for Handling Threats Potentially Harmful to the National Economy and/or Financial System Stability ("**Law 2/2020**") is still in effect but is partially revoked by Law No. 7 of 2021 regarding the Harmonisation of Tax Regulation.

As mentioned in our 2020 RTI APAC Guide (Indonesia), Law 2/2020 empowers various government bodies and regulators, including Bank Indonesia and OJK, to take necessary action and issue regulations to mitigate the impact of COVID-19 on Indonesia's economy and safeguard the stability of the country's financial system.

Relaxations on assessment of NPLs and restructured loans, and calculation of solvability ratios

POJK 11/2020

On 13 March 2020, OJK issued Regulation No.11/ POJK.03/2020 on National Economic Stimulus as Countercyclical Policy in relation to the Impact of COVID-19 ("**POJK 11/2020**"). POJK 11/2020 was further amended by OJK Regulation No. 17/POJK.03/2021 regarding the Second Amendment to POJK 11/2020. POJK 11/2020:

- provides conventional banks, sharia banks and rural banks with the ability to introduce internal guidelines for providing special assistance to debtors affected by the COVID-19 pandemic, especially MSMEs; and
- introduces more relaxed requirements when assessing debtors' credit quality and rating restructured loans (eg banks must now only consider the punctuality of repayment by their debtors when assigning a rating to debtors' loans with a credit ceiling of up to IDR10 billion if the debtor has been affected by the COVID-19 pandemic).

The provisions set out under POJK11/2020 are generally valid until 31 March 2023.

POJK 14/2020

On 17 April 2020, OJK issued OJK Regulation No.14/ POJK.05/2020 on Countercyclical Policy in relation to the Impact of COVID-19 for Non-Bank Financial Institutions ("**POJK14/2020**"). While POJK 11/2020 covers banks, POJK 14/2020 applies to non-bank financial institutions, including insurance and reinsurance companies, multi-finance companies, and pension funds. Like POJK 11/2020, POJK 14/2020 eases the requirements when assessing debtors' credit quality and rating restructured loans. It also softens the calculation of the solvability ratio for insurance companies.

POJK 14/2020 was amended by OJK Regulation No. 30/ POJK.05/2021 regarding the Second Amendment to POJK 14/2020.

The application of the provisions of POJK 14/2020 relies on the Indonesian government's declaration on the status of the COVID-19 pandemic, which has not been revoked as set forth under President of Republic of Indonesia number 24/2021 on the Stipulation of Corona Virus Disease 2019 Pandemic Factual Status. As such, POJK 14/2020 remains in effect today.

While the relaxation of the assessment of credit quality and restructured loans should be welcomed by financial institutions, potential investors in financial institution assets will need to take more care in conducting financial due diligence so as to ensure that they fully understand the quality of the target's loan book.

Glossary – Indonesia

Bankruptcy Law
Law No.37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations, as lastly amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector

Company Law
Law No.40 of 2007 regarding Limited Liability Company as amended by Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"), and lastly amended by the Government Regulation in lieu of Law No. 2 of 2022 on Job Creation ("**Perppu 2/2022**")

Composition Plan
a plan detailing how outstanding debts of the company are to be restructured

Creditors' Committee
a committee of creditors approved by the Supervisory Judge that is entitled to provide suggestions or advice to the administrator

Homologation Hearing
a hearing at which the Commercial Court 'rubber stamps' the agreed Composition Plan

ICC
Indonesian Civil Code

Initial Schedule
an initial schedule for the conduct of the PKPU proceedings

Investment Law
Law No. 25 of 2007 on Investment, as amended by Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"), and lastly amended by the Government Regulation in lieu of Law No. 2 of 2022 on Job Creation ("**Perppu 2/2022**")

Investment List
a list of business activities that are open to foreign investment or subject to certain restrictions as regulated under Presidential Regulation No.10 of 2021 on Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

OJK
the Financial Services Authority (*Otoritas Jasa Keuangan*)

PKPU
Penundaan Kewajiban Pembayaran Utang (suspension of debt payment obligations)

Second Meeting
if the Composition Plan is not approved by the majority of creditors, the company may convene a second meeting at which another vote occurs

Supervisory Judge
a judge appointed by the panel of judges to supervise the bankruptcy/ PKPU process

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Legal services are provided in Indonesia through Herbert Smith Freehills LLP's association with Hiswara Bunjamin & Tandjung, which are two independent firms that have a formal association in Indonesia.

Hiswara Bunjamin & Tandjung (HBT)'s restructuring, turnaround and insolvency (RTI) practice is one of the most experienced and successful in Indonesia and is highly recognised for its work with domestic and international clients in the most complex and significant informal financial restructurings and work outs, court-supervised debt restructuring, bankruptcy and insolvency. Our RTI team consists of banking & finance and dispute resolution specialists, offering complete and commercially relevant solutions to the client.

HBT and Herbert Smith Freehills have one of the closest and longest-standing associations in the Indonesian legal market, working together to protect the interests of foreign corporations and financial institutions investing and trading in Southeast Asia's largest economy.

Operating in seamless collaboration, we deliver an unrivalled combination of first-class local knowledge and the highest international standards in client care and sector expertise – a combination which has helped many major global companies navigate the legal, regulatory and business challenges of working in Indonesia.

Our track record includes advising on some of Indonesia's most ground-breaking transactions and projects, as well as representing clients in complex disputes, investigations and regulatory matters. Despite a challenging environment of the Indonesian restructuring regulations, we consistently deliver results to international clients, who consistently return to us.

Our team has received the following recent accolades:

- Ranked top tier in Restructuring and Insolvency, Indonesia, Legal 500 Asia Pacific 2019-2022
- Ranked top tier in Dispute Resolution, Indonesia, Legal 500 Asia Pacific 2012-2022
- Names To Know: Restructuring & Insolvency, Indonesia, Global Restructuring Review 2020
- Hiswara Bunjamin & Tandjung's lawyers are "*very approachable and flexible*" ...and they "*work with Herbert Smith Freehills like one firm, which is an important strength.*" Indonesia, Chambers Asia Pacific 2020
- "*A very professional, intelligent and dependable team. We are very happy with the work product.*" Restructuring & Insolvency, Indonesia, Legal 500 Asia Pacific 2022
- "*Debby Sulaiman and Roni Marpaung are excellent.*" Restructuring & Insolvency, Indonesia, Legal 500 Asia Pacific 2022
- "*...commercial and business-minded in their thinking.*" Indonesia, Chambers Asia Pacific 2020
- "*They can provide advice in multiple jurisdictions from a single touchpoint.*" Dispute Resolution, Indonesia, Chambers Asia Pacific 2020
- "*We are very impressed by their responsiveness,... they have a very good understanding of our needs.*" Dispute Resolution, Indonesia, Chambers Asia Pacific 2020