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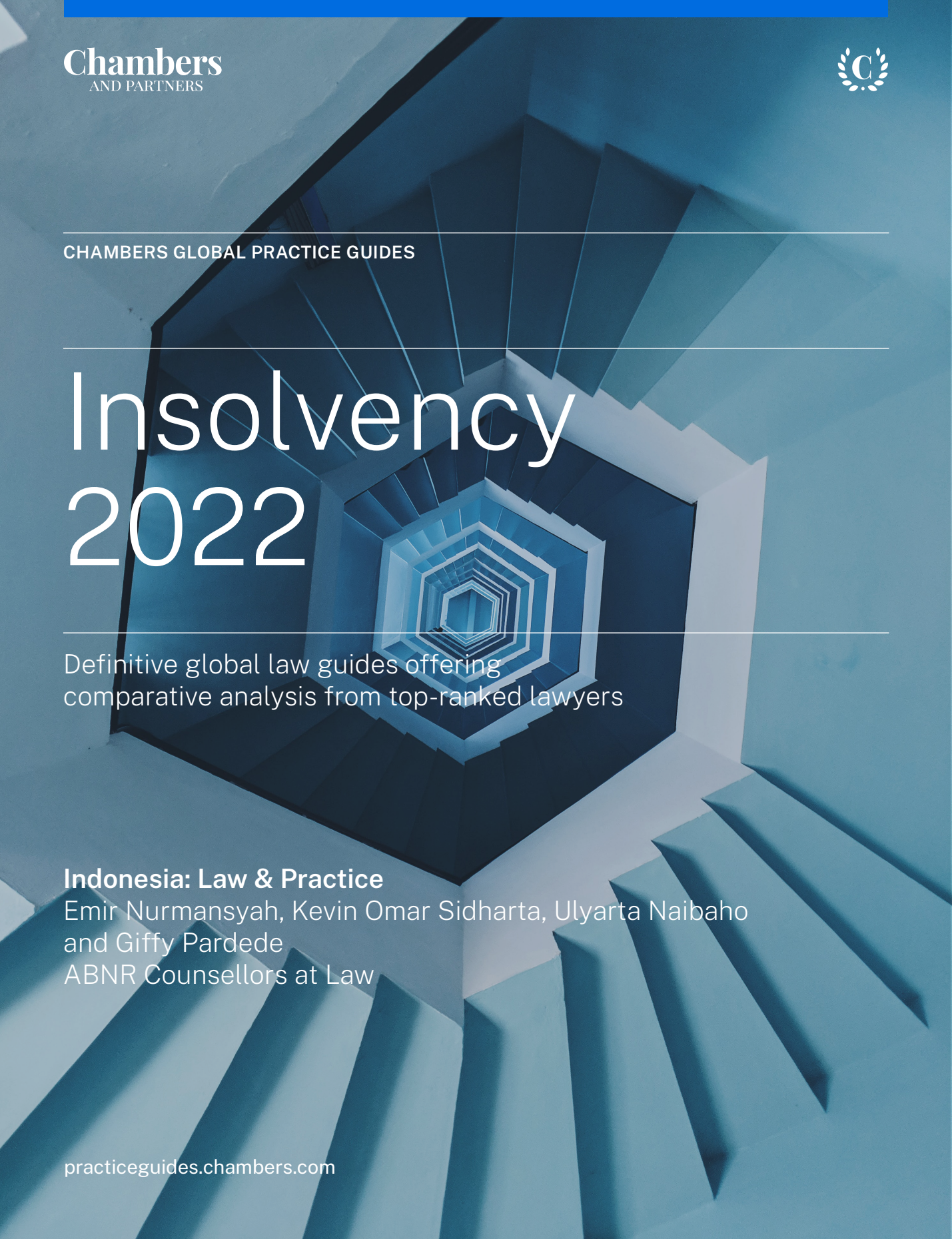

Indonesia: Law & Practice

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INDONESIA

Law and Practice

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1. State of the Restructuring Market

1.1 Market Trends and Changes

Based on data from the Case-Tracking System in five commercial courts (Central Jakarta, Medan, Semarang, Surabaya and Makassar) in 2021, there were 136 bankruptcy petitions and 732 Suspension of Payments ("PKPU") petition filings. In 2020, there were 114 bankruptcy petitions and 637 PKPU cases in total. At the time of writing (November 2022), there were so far 86 bankruptcy petitions and 451 PKPU petition filings in 2022. If the number of cases in 2021 and 2022 are examined over the same period (January to October), the number of bankruptcy petitions decreased from 114 to 86 cases, while the number of PKPU petitions decreased from 625 to 451.

The Indonesian aviation industry was heavily impacted in 2022, with two Indonesian airlines undergoing PKPU to restructure their debts. One of them is Garuda Indonesia, the country's national flag carrier, which has successfully completed the largest-ever aviation-sector restructuring (PKPU) in Indonesia, with government support.

At the time of writing, the Indonesian rupiah (IDR) had depreciated by almost 10% compared with early 2022. USD interest rates have increased several times, forcing the Indonesian central bank to follow suit.

If the IDR further depreciates and interest rates continue to rise, it is possible that the number of insolvency and restructuring cases in various sectors in Indonesia may increase in 2023.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

Financial restructuring, reorganisation, liquidation and insolvency of business entities can be dealt with through court-supervised proceedings or out-of-court processes.

Court-supervised proceedings are primarily governed by Law No 37 of 2004 on Bankruptcy and Suspension of Payments (Indonesian Bankruptcy Law or IBL), together with civil procedure law, which includes Supreme Court Decree No 109/MA/SK/IV/2020 on the Guide Book for Resolving Bankruptcy and PKPU Cases, dated 29 April 2020 (Supreme Court Manual).

Out-of-court processes are governed by contract law, as set out in the Indonesian Civil Code (ICC), and other relevant laws and regulations, depending upon the nature of the organisation, such as:

- sole traders, partnerships and limited partnerships – the ICC;
- limited liability companies – Law No 40 of 2007 on Limited Liability Companies as amended by Law No 11 of 2020 on Job Creation (Indonesian Company Law or ICL);
- co-operatives – Law No 25 of 1992 on Co-operatives as amended by Law No 11 of 2020 on Job Creation;
- charities and charitable foundations – Law No 16 of 2001 as amended by Law No 28 of 2004 on the Amendment of Law No 16 of 2001 on Foundations;
- state-owned companies – Law No 19 of 2003 on State-Owned Companies (State-Owned Enterprises/SOEs) as amended by Law No

11 of 2020 on Job Creation and Government Regulation No 45 of 2005 on Establishment, Management, Supervision and Dissolution of SOEs as amended by Government Regulation No 23 of 2022 on the Amendment of Government Regulation No 45 of 2005 on the Establishment, Management, Supervision and Dissolution of SOEs (SOE Liquidation Rules);

- securities issuers that have conducted public offerings and public companies –
  (a) Regulation of the Financial Services Authority (OJK) No 31/POJK.04/2015 on Disclosure of Material Information or Facts by Issuers or Public Companies;
  (b) Regulation of OJK No 26/POJK.04/2017 on Information Disclosure for an Issuer or Public Company; and
  (c) Circular Letter of Indonesian Stock Exchange No SE-008/BEJ/08-2004 on Temporary Suspension of Securities Trading of Listed Companies;
- banks, including Indonesian banks duly registered at the Financial Services Authority ("OJK") –
  (a) Law No 7 of 1992 as amended by Law No 10 of 1998 on Banking as amended by Law No 11 of 2020 on Job Creation;
  (b) Law No 24 of 2004 as amended by Law No 7 of 2009 on the Deposit Insurance Corporation ("LPS");
  (c) Law No 21 of 2011 concerning the Financial Services Authority (the "OJK Law");
  (d) Government Regulation No 25 of 1999 on Licence Revocation, Dissolution and Liquidation of Bank Business;
  (e) Regulation of OJK No 15/POJK.03/2017 on Determination of Status and Follow-Up of Supervision of Commercial Bank ("Per OJK 15/2017"); and
  (f) LPS Regulation No 1 of 2022 on Bank Liquidation for banks in the form of Limited Liability Companies (the "Bank Liquidation Rules");
- pension funds – Law No 11 of 1992 on Pension Funds and Regulation (Pension Fund Law) of OJK Regulation No 9/POJK.05/2014 on Dissolution and Liquidation of Pension Funds (Per OJK 9/2014) (the "Pension Funds Liquidation Rules");
- insurance companies – Law No 40 of 2014 on Insurance (the "Insurance Law") and Regulation of OJK No 28/POJK.05/2015 on Dissolution, Liquidation and Bankruptcy of Insurance, Islamic Insurance, Reinsurance and Islamic Reinsurance Companies (Insurance Companies Liquidation Rules);
- securities companies duly licensed and operating as underwriter, securities broker and investment manager under Law No 8 of 1995 on Capital Markets, in conjunction with Regulation of OJK No 3/POJK.04/2021 on Capital Market Activities Operations (the "Capital Market Rules");
- OJK Law and relevant OJK Regulation on licensing of securities companies conducting underwriting and securities broker business (the "Securities Companies Liquidation Rules");
- finance leasing companies, companies providing finance to infrastructure projects, factoring companies, consumer finance companies and credit card companies ("finance companies") – Regulation of OJK No 35/POJK.05/2018 on Finance Companies Business Activities as amended by Regulation of OJK No 7/POJK.05/2022 on the Amendment of Regulation of OJK No 35/POJK.05/2018 on Finance Company Business Activities (the "Finance Companies Liquidation Rules"); and
- venture capital companies – Regulation of OJK No 34/POJK.05/2015 on Licences and Institution of Venture Capital Companies (the "Venture Capital Companies Liquidation Rules").

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The IBL provides two types of court-supervised restructuring and insolvency proceedings that may be initiated either voluntarily (by the debtor) or involuntarily (by creditors) by submission of a petition to the commercial court:

- bankruptcy proceedings which aim at liquidation, whereby a receiver will be appointed; and
- suspension of payments (PKPU), whereby an administrator will be appointed.

The bankruptcy and PKPU processes are intertwined because restructuring can emerge from a bankruptcy proceeding, since the IBL provides the opportunity for a bankrupt debtor to offer a composition plan, while liquidation can result from a PKPU proceeding, especially if the PKPU proceeding fails to produce a composition plan that is acceptable to the creditors.

Bankruptcy Proceedings

The IBL provides that if the commercial court approves a bankruptcy petition, it is required to render a bankruptcy declaration and appoint one or more receiver(s) and a supervisory judge.

In bankruptcy proceedings, after the bankruptcy declaration is rendered by the commercial court, the affairs of a bankrupt debtor are handled and managed by one or more court-appointed receivers. The directors of the debtor that is a legal entity lose their power to manage the bankrupt debtor's affairs and estate, as these powers are given to the receiver. The receiver is subject to the supervision of a court-appointed supervisory judge.

PKPU Proceedings

The IBL provides that, if the commercial court approves a PKPU petition, it is required by law to grant the debtor a provisional PKPU for up to 45 days and appoint one or more administrator(s) and a supervisory judge. The 45-day provisional PKPU may be extended up to a maximum of 270 days from the date the provisional PKPU is granted (in which case, it becomes a permanent PKPU).

After the PKPU declaration is rendered by the commercial court, the affairs and the estate of a corporate debtor in PKPU proceedings are handled and managed jointly by the director(s) of the company and one or more court-appointed administrators. The administrator is subject to the supervision of a court-appointed supervisory judge. In this regard, the debtor will still be entitled to manage and dispose of its assets, but only jointly with the administrator. The debtor cannot conduct any management or ownership actions relating to all or part of its assets without the approval of the administrator.

Any violation of this provision will entitle the administrator to take whatever action is required to ensure that the debtor's assets are not jeopardised by the debtor's action. Performance by the debtor, without the administrator's consent, of the debtor's obligation arising after the commencement of the PKPU proceedings, may only be imposed on the debtor's assets to the extent that the debtor's assets gain advantage/benefit from this performance.

D&L Proceedings

There is another type of out-of-court insolvency proceeding that is provided by the ICL, known as a dissolution and liquidation proceeding ("D&L proceeding"), whereby a liquidator is appointed. Under this procedure, no restructuring can be

done as it is aimed at liquidation and the end result will be the termination of the company's legal entity status.

2.3 Obligation to Commence Formal Insolvency Proceedings

There are no mandatory obligations for companies to commence formal insolvency proceedings within specified times, except in the case of a company in liquidation the assets of which are insufficient to cover its liabilities. In this case, the liquidator is required to file a bankruptcy petition pursuant to the IBL (unless all known creditors agree that a settlement can be achieved outside bankruptcy).

2.4 Commencing Involuntary Proceedings

Creditors may commence involuntary court-supervised proceedings if a debtor fails to pay its debt(s) by filing either a bankruptcy or PKPU petition against the debtor in the commercial court. That petition will be granted if the following requirements are fulfilled:

- the debtor has at least two creditors;
- the debtor has failed to pay at least one debt that is due and owing; and
- the above two requirements can be summarily proved (eg, a dispute on the amount of debt being claimed does not make it impossible to summarily prove the debt's existence).

The IBL provides that a bankruptcy petition may be filed by:

- one or more creditors;
- the debtor;
- the public prosecutor (if this is in the public interest);
- prescribed agencies in the case of particular debtors –
  - (a) banks, securities companies, the stock exchange, clearing and guarantee institutions, depository and settlement institutions, insurance and re-insurance companies, pension funds by the OJK; and
  - (b) an SOE operating in the public interest, the capital of which is owned by the State and not divided into shares (a "Public Interest SOE"), by the minister of finance of the Republic of Indonesia (MoF).

If the petition is granted, the commercial court will either declare the debtor bankrupt or grant the debtor protection under a provisional PKPU.

With respect to D&L proceedings under the ICL, the district court (*Pengadilan Negeri*) may involuntarily dissolve a company (and appoint a liquidator) if it declares the company dissolved) by rendering a court order, based on an involuntary request from the following parties:

- the Prosecutor's Office on the grounds of public policy;
- an interested party due to legal defect in the deed of establishment; or
- the shareholders, the board of directors (BOD) or board of commissioners (BOC) on the grounds that the company can no longer continue (eg, the company is inactive/dormant; the majority of the shareholders' whereabouts are no longer known; the general meeting of shareholders (GMS) is unable to adopt a valid resolution due, among other things, to a deadlock between two groups of shareholders each owning 50% of the shares; the assets of the company have decreased/depreciated).

2.5 Requirement for Insolvency

The term "insolvency" as used in the IBL has a different meaning from that in many other

jurisdictions. It does not constitute a test for bankruptcy declaration, but refers to the specific concept of "the state of being insolvent at law", which occurs during bankruptcy or PKPU proceedings.

Under the IBL, a bankruptcy declaration or a declaration granting PKPU (marking the commencement of either the bankruptcy or PKPU proceedings), will be rendered by the commercial court if either the bankruptcy or PKPU petition being filed (whether voluntarily by the debtor itself or involuntarily by creditors) is allowed, based on fulfilment of the requirements for either bankruptcy or PKPU (see **2.4 Commencing Involuntary Proceedings**).

Under the ICL, one of the conditions for commencing D&L proceedings against a company is that it is declared bankrupt and its estate is in a state of insolvency, in terms of the requirements set out in the IBL.

2.6 Specific Statutory Restructuring and Insolvency Regimes

According to the IBL, the initiation of either bankruptcy or PKPU proceedings against:

- banks, insurance companies, securities companies, pension funds, and public interest state-owned companies can only be undertaken by the OJK; and
- a Public Interest SOE can only be undertaken by the MoF.

Although not explicitly regulated by the IBL, the Supreme Court manual requires the OJK to initiate voluntary bankruptcy proceedings against a "finance institution" or involuntary bankruptcy proceedings against "other financial services institutions" (eg, pawnshops, deposit insurance institutions, Indonesian eximbank (export financing), a secondary mortgage facility, the health social security agency (*Badan Penyelenggara Jaminan Sosial*) and others that are under OJK supervision). There are no similar provisions for PKPU proceedings.

Banks

In practice, no bank in Indonesia has ever been either liquidated under the bankruptcy proceedings or restructured under the PKPU proceedings under the IBL, although it is technically possible. Instead, all bank dissolution and liquidation cases that have occurred in Indonesia in practice used the D&L proceedings under the ICL and the Bank Liquidation Rules.

According to the Bank Liquidation Rules, a bank may be dissolved and liquidated based on a decision of:

- its shareholders upon the revocation of its banking licence by the OJK at the shareholders' request; or
- the LPS in the event that:
  - (a) the bank is categorised as a non-systemic failed bank (as defined below) and the LPS has decided not to save that bank; and
  - (b) the OJK, at the request of the LPS, has revoked the bank's banking licence.

A bank that suffers financial difficulties (eg, a solvency issue), which meets certain criteria as set out under Per OJK 15/2017 and is therefore considered as harming the continuity of its business, would be subject to special supervision.

In this regard, there are two categories:

- a systemic bank (which is defined as a bank that, due to the size of its assets, capital, liabilities, network, transaction complexities

over banking services, and the connectivity of that bank to other participants in the financial sector, may cause the failure of a part of or the entire bank's financial services, either operationally or financially, if the bank suffers disruption or failure); and
- a non-systemic bank.

If a bank under special supervision meets certain criteria as set out by Per OJK 15/2017, it will be regarded as a "failed bank".

Non-systemic bank

In the case of a non-systemic bank, the OJK will declare that the non-systemic bank "cannot be restructured" (it is a "non-systemic failed bank") and the OJK will inform the relevant non-systemic failed bank and the LPS in writing to obtain further decisions regarding the non-systemic failed bank. The LPS can later decide whether or not to save the non-systemic failed bank. If the LPS decides not to save a non-systemic failed bank, the OJK will revoke its banking licence after receiving notification of the LPS's decision. The LPS will subsequently dissolve and liquidate the non-systemic failed bank by taking over the authority of the GMS, declaring the dissolution of the bank, declaring that the bank is in liquidation and setting up a liquidation team.

Systemic failed bank

For a systemic failed bank, the OJK will request to convene a meeting of the Financial System Stability Committee (*Komite Stabilitas Sistem Keuangan* or KKSK), consisting of the MoF, the governor of the central bank, the chairman of the board of the OJK and the chairman of the board of the LPS, to determine steps to handle the systemic bank's problem. If the LPS is handling the systemic bank's affairs based on a KKSK decision, the LPS will take over the systemic bank, either with or without the participation of the shareholders of the systemic bank ("open bank assistance"), restructure the systemic bank, convert all restructuring/handling costs spent by the LPS as the LPS's equity/shares and later sell all the shares in the systemic bank. Due to its systemic nature, the systemic bank will not be formally dissolved or liquidated.

Insurance Companies

Insurance companies are insurance and reinsurance companies duly established and licensed based on insurance law.

According to the Insurance Companies Liquidation Rules:

- a creditor of an insurance company may request the OJK to file a bankruptcy petition against an insurance company to the commercial court, the OJK would then be required to approve or reject such a request within 30 days of the complete request being received, and the insurance company cannot file a voluntary petition with the OJK to file a bankruptcy petition against itself; and
- the D&L proceedings under the ICL and the Insurance Companies Liquidation Rules constitute another proceeding recognised by Indonesian law which is applicable to insurance companies, and different from the insolvency proceedings governed by the IBL.

Securities Companies

This refers to duly licensed securities companies operating as underwriter, securities broker and investment manager under the Capital Market Rules.

According to the Securities Companies Liquidation Rules, in the event that the licences of the Securities Companies are revoked, the use of the name and logo of such securities compa-

nies for any activities is prohibited, except for the activities relating to the dissolution of the securities companies.

Pension Funds

According to the Pension Fund Law and the OJK Law:

- dissolution of pension funds can be carried out at the request of the founder of the pension funds (the "Founder") to the OJK;
- a pension fund can be dissolved by the OJK if it is of the view that the pension fund cannot fulfil its liabilities to the participants, the retirees and other entitled parties, or in the event that the cessation of contribution payments is deemed harmful to the financial condition of the pension fund;
- if the founder of the pension fund is dissolved, the pension fund is dissolved; and
- the dissolution of a pension fund and the appointment of a liquidator is a decision for the OJK.

According to Per OJK 9/2014, a pension fund may be dissolved by the OJK if:

- the Founder files a petition to dissolve the pension fund with the OJK;
- the Founder is dissolved, and no replacement of the Founder exists and the liquidator of the Founder (or the Founder itself) files a petition with the OJK to dissolve the pension funds;
- the OJK determines that the pension fund is unable to fulfil its obligations to its participants, retirees and the entitled parties (eg, the widow/widower/child of the participant/retiree) if:
  - (a) the pension fund suffers a liquidity problem in which it is predicted that it will not be able to pay the retirement benefit until the next subsequent year; and/or
  - (b) for three consecutive years, a pension fund with a fixed benefit pension programme is at level three funding quality and has a solvability ratio of less than 50%; and/or
- the cessation of contribution payments could harm the financial state of the pension funds if:
  - (a) the Founder does not pay the due contribution for one consecutive year;
  - (b) the Founder has an outstanding due contribution accumulation that is equal to two years of contributions or more; and/or
  - (c) the pension fund with a fixed benefit pension programme has no participants.

Public Interest SOE

According to the SOE Liquidation Rules, a Public Interest SOE may be dissolved due to the following reasons:

- a determination by a government regulation based on the recommendation of a minister who is appointed and authorised by the government as the capital owner (an "SOE Minister");
- the duration of the Public Interest SOE has expired;
- a court order (based on a petition filed by the public prosecutor due to violation of public interest);
- upon termination of a bankruptcy declaration by a decision of the commercial court, as the bankruptcy estate of the Public Interest SOE that has been declared bankrupt is not sufficient to cover the cost of the bankruptcy; and/or
- the bankruptcy estate of the Public Interest SOE that has been declared bankrupt is in a state of insolvency as governed by the IBL.

The dissolution of a state-owned company, including a Public Interest SOE, would commence under government regulations, similar to its establishment.

The dissolution of a Public Interest SOE must first be recommended by the SOE Minister (after receiving consideration and a review from the MoF and other related ministers or heads of agencies) to the president.

Finance Companies

According to the Finance Companies Liquidation Rules, a finance company may be dissolved and liquidated based on the decision of:

- the GMS - the decision of the GMS to dissolve and liquidate a finance company can only be passed upon obtaining approval from the OJK;
- a court order; or
- a follow-up action of a bankruptcy process under the IBL.

In the case of either of the last two reasons, the liquidator must report the dissolution to the OJK within 15 working days as of the final and binding court decision.

Venture Capital Companies

According to the Venture Capital Companies Liquidation Rules, the dissolution and liquidation of a venture capital company may be:

- based on a bankruptcy declaration or court order – the liquidator must report to the OJK within 20 working days as of the bankruptcy declaration/court order;
- based on the decision of the GMS or due to the expiry of its duration as stipulated in the articles of association; or
- due to no longer engaging in venture capital business activities.

In the case of either of the last two reasons, the dissolution can only occur after obtaining approval from the OJK.

3. Out-of-Court Restructurings and Consensual Workouts

3.1 Consensual and Other Out-of-Court Workouts and Restructurings

There is no mandatory consensual restructuring negotiation requirement before the commencement of a formal “statutory process”.

It is often the case that a debtor prefers a court-supervised process due to the benefits the IBL provides to debtors, which are:

- a stay period that prevents the enforcement of creditors’ rights against the debtor during the restructuring process; and
- the possibility of a cram-down on dissenting and non-participating creditors.

An example of a high-profile informal restructuring in 2019/2020 involved PT Krakatau Steel (Persero) Tbk, a state-owned public company, which successfully restructured its USD2.2 billion debt to various bank creditors.

Some sectors, such as aviation, property and hospitality, have been heavily impacted by the COVID-19 pandemic in Indonesia, as has been the case around the globe. As for the court-supervised PKPU process, the number of cases in 2020 statistically increased, although not significantly. While COVID-19 contributed to an increase in the 2020 PKPU case numbers, the fact that the increase was insignificant reflects

the fact that consensual, non-judicial or other informal restructuring processes are preferable to statutory processes and tend to preserve value for stakeholders.

Government Intervention

The approach of the Indonesian government to the pandemic seems to have been to try somehow to balance the health and wealth sides of the equation. Some regulations have been issued to ease the repayment schedules for debtors (as well as provide tax relief), which has generally served to increase the number of out-of-court restructuring processes. The government has also tried to save some of its Indonesian state-owned enterprises ("BUMN") with bail-outs or loans. For example, in 2020 a government capital participation was made in national flag-carrier Garuda Indonesia, which is estimated to amount to around USD570 million. In the same year, Garuda Indonesia managed to secure approval from the USD500 million global sukuk holders to extend the maturity date of its obligations under its global sukuk. In 2021, Garuda Indonesia further managed to obtain approval from various state-owned banks and enterprises, as well as local private banks for rescheduling its debts. At the end of 2021, Garuda Indonesia was formally forced to undergo court-supervised PKPU, and by June 2022 it had successfully restructured its debts.

In the insurance sector, PT Asuransi Jiwasraya (Persero) ("Jiwasraya"), a state-owned national life insurance company, defaulted on its obligation to its policyholders. Their claims, as of October 2020, totalled IDR19.3 trillion on the part of approximately 69,445 parties. As a plan to rescue all of Jiwasraya's insurance policies, the government, through the Ministry of State-Owned Enterprises, prepared funds of up to IDR22 trillion as government capital participation to establish a new insurance company, Indonesia Financial Group (IFG) Life, which will assume Jiwasraya's liabilities to its customers under the restructured life insurance policies transferred from Jiwasraya to IFG Life.

Future Outlook

It is expected that the number of restructurings, both out-of-court and court-supervised, will increase in the near future, given the economic dislocation resulting from COVID-19, rupiah depreciation, and interest rate hikes.

3.2 Consensual Restructuring and Workout Processes

Standstill agreements, default waivers or similar agreements as part of an informal and consensual restructuring process or negotiation are not uncommon in Indonesia. Especially in larger restructurings, many of the practices common in larger/more complex restructurings are followed or mirrored (with local adaptations).

A standstill agreement generally contains obligations for the company aimed at, for example, providing the creditor with more detailed information on the financial circumstances of the company. It is also common to require the inclusion of more covenants, especially relating to the financial condition or actions of the company; and to request additional security as part of the restructuring arrangement.

Standstill agreements have become more common since the onset of the COVID-19 pandemic. As part of the restructuring plan, the borrower will normally be granted a grace period for repayment of the loan. Alternatively, in a more general sense, a default waiver is always an option, subject to the outcomes of negotiations between the creditor and debtor.

The establishment or appointment of a creditor steering committee, informal ad hoc creditor committee or co-ordinators or other representatives of creditors is not common in Indonesia during informal and consensual restructuring processes. Nevertheless, there are certain types of loan deals in which the creditor becomes a shareholder in the borrower and nominates director(s) in the company. However, this is not typically caused by the restructuring itself, but more by the arrangement and type of loan.

3.3 New Money

New money may be injected by various stakeholders, such as current or new shareholders or (secured) creditors or new creditors. Under Indonesian law, there is no real possibility (whether in or outside formal insolvency proceedings) to grant providers of new money any super-priority liens or rights. New money providers may stipulate in rem security rights (over either unencumbered assets or second/subsequent-rank already encumbered assets) as a condition for providing their money, but by doing so can only jump ahead of unsecured creditors, not existing secured or otherwise preferred creditors (except with their consent). Given there is a possibility that not all creditors would be involved in or would consent to the out-of-court restructuring process, there may also be a risk of the transaction being set aside or annulled in bankruptcy for being detrimental to other creditors (see **11. Transfers/Transactions That May Be Set Aside**).

3.4 Duties on Creditors

There are no statutory requirements or legal doctrine imposing duties on creditors. As a general rule, a creditor is entitled to act in its own interest and may decline any proposal for an out-of-court restructuring. See **6.3 Roles of Creditors** and **10.2 Direct Fiduciary Breach Claims**.

3.5 Out-of-Court Financial Restructuring or Workout

As there is no statutory provision enabling a cram-down to deal with dissenting creditors in an out-of-court restructuring, a consensual, agreed out-of-court financial restructuring or work-out may not be entirely effective if not all creditors participate in the process and/or agree with the proposal. As the non-participating creditors and/or the dissenting creditors are not bound by the agreed restructuring, each of them may initiate legal proceedings against the debtor on the basis of default, which would jeopardise the "partially" agreed restructuring implementation.

Credit agreements do not typically contain terms permitting a majority or super-majority of lenders to bind dissenting lenders (within the same credit agreement) to change the credit agreement terms.

4. Secured Creditor Rights, Remedies and Priorities

4.1 Liens/Security

The types of security that may be taken by secured creditors consist of mortgages over land (*Hak Tanggungan*), fiduciary security, pledge, and hypothec.

A mortgage is used to secure certain real-estate titles over land and fixtures attaching to it.

Other immovable assets (which arguably include land with land titles that may not be mortgaged, as well as uncertified land), and movable, tangible and intangible assets (including but not limited to receivables, insurance proceeds, and intellectual property rights) may be secured by a fiduciary transfer (also referred to as a "fiduciary assignment").

Assets that can be secured by a fiduciary transfer (other than immovable assets) can also be secured by pledge. Due to the requirement under a pledge that the pledged property be delivered to the creditor, most assets are secured by a fiduciary transfer, as it does not include this requirement. An exception to this is shares of an Indonesian company and bank-account balances, which, in practice, are normally secured by pledge.

A hypothec is used to secure registered vessels/ships that have a gross tonnage of more than 20 cubic metres or the equivalent of seven gross tonnage.

The formalities to establish security under Indonesian law in general (other than pledge) involve:

- the execution of a deed before the relevant officials (land conveyancer for mortgage, notary for fiduciary security, vessel registration and ownership recordation officer for a hypothec over a vessel); and
- registration with the relevant register maintained by the relevant authority (land registry by the land office, fiduciary registry by the fiduciary registration office, vessel main registry by the ministry of transportation).

4.2 Rights and Remedies

Beyond the restructuring/insolvency context, the rights and remedies that secured creditors have to enforce their security upon the debtor's default on its secured obligations is by way of selling the security through public auction (or private sale in certain circumstances) either:

- under instant or direct right of execution (*parate eksekutie*), without a judicial process, if the security provider is co-operative; or
- based on a court execution order (*fiat eksekusi*) ordering the execution attachment and auction of the security if the collateral provider is unco-operative.

Under court-supervised restructuring/insolvency proceedings, the secured creditors' right to enforce their security is subject to a stay for a maximum of 90 days as of a bankruptcy declaration being rendered in bankruptcy proceedings and during the entire period of PKPU proceedings, which can be up to a maximum of 270 days from the PKPU decision being granted. After the stay period has expired, the secured creditor is free to enforce its security, but must be able to complete the enforcement process within two months of the bankruptcy estate being in a state of insolvency. Otherwise, the receiver will take over security enforcement, and the bankruptcy costs (including the receiver's fee) will need to be deducted from the sale proceeds. The automatic stay in this provision is aimed at:

- increasing the possibility of composition; or
- increasing the possibility of optimising the bankruptcy estate; or
- enabling the receiver/curator to perform its duties optimally.

During the stay period, no legal actions to obtain payment in respect of receivables may be brought before a court.

See **6.1 Statutory Process for a Financial Restructuring/Reorganisation**.

4.3 Special Procedural Protections and Rights

There are no special procedural protections and rights in statutory insolvency and restructuring proceedings other than the IBL rule requiring dissenting secured creditors to be compen-

sated by the lowest value of either the collateral (can be selected as between the collateral value determined by the collateral documents or the collateral value determined by an appraiser appointed by the supervisory judge) or the actual claim directly secured by in rem security rights.

Such a rule is difficult to apply in practice. There is no implementing regulation on how such a provision will work in practice, and it is unprecedented. There is no prescribed procedure on how to remedy if the debtor does not have sufficient cash to pay the compensation, which is quite likely. It is also unclear when the compensation payment should take place, and whether it can be paid by instalment.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Creditors' claims are classified into several types, as follows.

Bankruptcy estate claims, also known as post-bankruptcy claims, are claims against the bankruptcy estate which arise during the bankruptcy proceedings after the bankruptcy declaration is rendered and would normally rank higher than any other type of claims, for example:

- fees of the receiver/administrator;
- costs in the liquidation of the bankruptcy estate or costs incurred in the PKPU process (if commenced prior to the bankruptcy);
- fees of experts engaged during the proceedings;
- post-bankruptcy financing;
- lease of the bankrupt's house or offices during the bankruptcy proceedings; and
- wages of employees of the bankrupt debtor for their continued employment during the bankruptcy proceedings.

Preferred Claims

There are several types of preferred claims.

Preferred claims that rank higher than secured claims

Preferred claims that rank higher than secured claims will need to be paid from the entire bankruptcy estate, including but not limited to the assets of the debtor that have been encumbered by in rem security rights being held by the secured claims, ahead of the unsecured claims, for example:

- outstanding wages (excluding severance payments and other rights) of the employees of the bankrupt debtor;
- specific expenses stipulated by the Tax Law, which include:
  - (a) legal expenses arising solely from a court order to auction movable and or immovable goods;
  - (b) expenses incurred for securing the goods;
  - (c) legal expenses, arising solely from the auction and settlement of inheritance; and
  - (d) tax claims, court charges that specifically result from the disposal of a movable or immovable asset, and the legal charges exclusively caused by the sale and saving of the estate.

Preferred claims that rank lower than secured creditors' claims

Specific statutorily preferred creditors whose preference relates only to the debtor's specific assets, as stipulated by Article 1139 ICC: if the specific relevant assets are subject to in rem

security rights of the secured claim, the secured claim will rank higher.

General preferred claims
General preferred claims will need to be paid from the assets under the bankruptcy estate that have not been encumbered by in rem security rights being held by the secured claims, ahead of the unsecured claims.

General statutorily preferred creditors of the debtor's assets in general, as stipulated by Article 1149 of the ICC, include the revenue authorities and the outstanding rights of the employees of the bankrupt debtor, other than outstanding wages (eg, severance payments).

Secured Claims
Secured claims are claims that are secured with in rem security rights over the debtor's particular assets, regardless of whether or not the debt being secured is the debtor's direct debt.

Note that the IBL provides that secured creditors:

- must be able to prove that part of their secured claims cannot be settled from the sale proceeds of the security, with a right to request the unsecured claims' right to be granted to that part of their secured claims, without jeopardising their privilege rights over the security;
- must intend to cast their votes in the voting of the composition plan under the bankruptcy proceedings with the right to release their privilege rights under their secured claims to become unsecured claims; and
- whose secured claims cannot be entirely fulfilled from the sale proceeds of the security may have their unpaid secured claims converted into unsecured claims.

Unsecured Claims
Unsecured claims are not secured with any in rem security rights and do not have any privilege granted by the prevailing laws and regulations. They will be paid from the assets under the bankruptcy estate that have not been encumbered by in rem security rights held by the secured claims, after the general preferred claims have been fully paid.

The subordination of the creditor's claim of any class during the bankruptcy proceedings or the PKPU proceedings is not recognised under the IBL.

5.2 Unsecured Trade Creditors
Unsecured trade creditors are also entitled to vote on the composition plan offered by the debtor. For the continuation of business, it is important for the debtor to be able to secure continuous support from its trade creditors following the PKPU process, which may not be secured if the applicable restructuring terms offered to trade creditors are not favourable.

5.3 Rights and Remedies for Unsecured Creditors
Under the IBL, unsecured creditors are entitled to vote on the composition plan being offered by the debtor in both bankruptcy and PKPU proceedings. A composition plan will be deemed as approved by the creditors if it fulfils PKPU voting requirements and bankruptcy voting requirements.

Failure to secure majority approval from the unsecured creditors may either:

- disrupt or block a restructuring plan; or
- not achieve deferral of a liquidation.

5.4 Pre-judgment Attachments

The IBL allows a bankruptcy petitioner to request the commercial court to:

- impose a conservatory attachment on the debtor's assets; and/or
- appoint an interim receiver to supervise the debtor's business with respect to the estate of the debtor prior to its bankruptcy.

There have been no cases to date involving either of these processes.

5.5 Priority Claims in Restructuring and Insolvency Proceedings

See **5.1 Differing Rights and Priorities**.

New-money claims are not a priority, except for the privilege right under the security interest being provided (if any).

6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

6.1 Statutory Process for a Financial Restructuring/Reorganisation

PKPU Proceedings

See also **2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership** on PKPU proceedings.

During PKPU proceedings, the appointed administrator is required to announce the PKPU decision as soon as possible in the state gazette and in at least two daily newspapers determined by the Supervisory Judge. The announcement will contain the Supervisory Judge's determination on:

- the deadline for the claim submission;
- the schedule for the claim-verification meeting;
- the date and time the proposed composition plan will be discussed and decided in the creditors' meeting led by the Supervisory Judge; and
- the date of the judge's deliberation meeting.

All claims submitted by the creditors to the administrator must be verified against the debtor's record/book and report, based on the rules of verification set out in the IBL.

The PKPU may be terminated at the request of the Supervisory Judge, or one or more creditors, or upon the recommendation of the Commercial Court, if certain conditions are fulfilled, eg, the debtor is acting in bad faith in managing its assets during the PKPU, or has inflicted loss to the creditor and others. This may end up with the debtor's bankruptcy declaration.

The debtor may, at any time, request that the Commercial Court lift the PKPU, with the argument that the debtor is now able to start repaying its debts. In this situation, the Commercial Court will summon the administrator and the creditors before making a decision.

A meeting of creditors must be called within 45 days of granting the provisional PKPU. At this meeting, the secured and unsecured creditors must either:

- approve the composition plan, if a plan has been submitted to the commercial court and is ready to be voted on; or
- agree to convert the provisional suspension of payments into a permanent PKPU for a certain period (up to 270 days from the date of granting the provisional PKPU) if the debtor requests a PKPU-period extension; or

- reject the composition plan or the request to extend the PKPU period, in which case the debtor will subsequently be declared bankrupt (the bankruptcy estate will immediately be in a state of insolvency).

In PKPU proceedings, the decision to approve the composition plan or to extend the PKPU period or to grant a permanent PKPU requires approval from:

- more than half of the unsecured creditors, who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged, and who represent at least two thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and
- more than half of the secured creditors, who are present or represented at the meeting, and who represent at least two thirds of the total amount of the secured claims of the secured creditors present or represented at the meeting.

The above constitute the PKPU voting requirements.

In the scheduled judge's deliberation hearing, the commercial court must decide whether or not to confirm the approved plan, together with its reasoning. The commercial court may only refuse to ratify the plan if:

- the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition; or
- implementation of the plan is not adequately assured; or
- the plan was concluded fraudulently or under undue influence of certain creditors; and/or
- the administration costs cannot be paid.

If a composition plan is approved, confirmed and becomes final and binding, it will bind all creditors except the dissenting secured creditors, as explained in **4.3 Special Procedural Protections and Rights**.

The bankruptcy will immediately be declared and the bankruptcy estate will be in a state of insolvency, if:

- no plan is submitted, and the request to extend the PKPU fails to be granted by the creditors; or
- no composition is approved by the creditors after the maximum period of the PKPU (270 days after the provisional suspension of payments is granted) expires; or
- the plan is rejected in the voting process by the creditors; or
- the plan is approved by the creditors but not confirmed by the commercial court.

Bankruptcy Proceedings

See also **2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership** on bankruptcy proceedings.

The receiver must announce to all known creditors in writing and in the state gazette and in at least two daily newspapers, the supervisory judge's determination on:

- the deadline for claim submission;
- the deadline for tax verification; and
- the schedule for the creditors' meeting to conduct claim verification.

All claims submitted by the creditors to the appointed receiver must be verified against the debtor's record/book and report based on the rules of verification as set out in the IBL.

After a bankruptcy declaration is rendered, the bankrupt debtor is entitled to submit a composition plan. In bankruptcy proceedings, the decision to approve the composition plan requires approval from:

- more than half the unsecured creditors, who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and
- who represent at least two thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged.

The above constitute the bankruptcy voting requirements.

In the scheduled judge's deliberation hearing, the commercial court must decide whether or not to confirm the approved composition plan, together with its grounds. The commercial court may only refuse to confirm the approved composition plan if:

- the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition; or
- implementation of the plan is not adequately assured; or
- the plan was concluded fraudulently or under undue influence of certain creditors.

If a composition plan is approved, confirmed and becomes final and binding, it will bind all unsecured creditors.

The bankruptcy estate will be in a state of insolvency if:

- no composition plan is offered; or
- the composition plan offered is rejected by the creditors; or
- the commercial court refuses to confirm the approved composition plan.

6.2 Position of the Company

See **2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership** and **6.1 Statutory Process for a Financial Restructuring/Reorganisation** on PKPU proceedings and bankruptcy proceedings.

The IBL provisions allow the debtor and the administrator in PKPU proceedings or the receiver in bankruptcy proceedings to obtain new financing from a third party after obtaining the supervisory judge's approval. If this new financing requires security from the debtor's assets, however, the security can only be provided from the debtor's assets that are free from any encumbrances or existing security right. Therefore, the claims under the new financing do not constitute priority claims, other than the privilege right under the security interest being provided (if any).

The PKPU decision and the bankruptcy declaration trigger an automatic stay of the debtor's estate as explained in **4.2 Rights and Remedies**.

6.3 Roles of Creditors

Creditors are divided into two separate classes for the purpose of restructuring under both pro-

ceedings, ie, secured and unsecured creditors, on the basis of claim verification in PKPU or bankruptcy proceedings.

PKPU Proceedings
In PKPU proceedings, the commercial court will appoint a creditors' committee if:

- the petition for the PKPU covers a debt that is complex or has numerous creditors; or
- the appointment is desired by the creditors representing at least half of those acknowledging the claim.

The administrators must request and consider recommendations from the creditors' committee in conducting their tasks. The creditors' committee may give its opinion and recommendations to the administrators to assist them in conducting their tasks in the PKPU proceeding.

The supervisory judge may appoint an expert to conduct due diligence and prepare a report concerning the condition of the debtor's estate. Every three months following the PKPU decision, the administrator must report on the condition of the debtor's estate.

Bankruptcy Proceedings
In bankruptcy proceedings, the commercial court in the bankruptcy declaration, or in a subsequent order, may establish a provisional creditors' committee consisting of three parties selected from the known creditors for the purpose of providing advice to the receiver. After the claim verification is completed, the supervisory judge will form a permanent creditors' committee if this is requested and approved by the unsecured creditors in a meeting with a simple majority of the votes. The receiver is not bound by the creditors' committee's opinion.

The creditors' committee is entitled to request to see all books, documents and letters concerning the bankruptcy, and the receiver is obliged to provide the creditors' committee with all information being requested.

The ICL does not provide any rules on the creditors' committee.

6.4 Claims of Dissenting Creditors

The dissenting creditors' claims (other than the dissenting secured creditors' claims) may be modified without the consent of those creditors, to the extent that the composition plan is approved by the creditors on the basis of either the PKPU or bankruptcy voting requirements.

6.5 Trading of Claims Against a Company

It is possible for claims against a company under PKPU/bankruptcy proceedings to be traded, taking into account the following:

- any transfer of claims against the company after the PKPU/bankruptcy proceedings commenced cannot be set off;
- any transfer of claims against the company performed after the bankruptcy proceedings commenced, by way of breaking up claims, will not create voting rights to the new creditors; and
- the voting right arising from claims against the company being transferred in its entirety after the bankruptcy proceedings have commenced will transfer to the new creditor.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

The IBL does not provide clear rules on this matter. In practice, the restructuring procedures under the IBL have been widely used by vari-

ous corporate group companies on a combined basis for administrative efficiency.

6.7 Restrictions on a Company's Use of Its Assets

See **2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership**, **6.1 Statutory Process for a Financial Restructuring/Reorganisation** and **6.8 Asset Disposition and Related Procedures**.

In bankruptcy proceedings, the receiver alone can use the bankruptcy estate.

6.8 Asset Disposition and Related Procedures

PKPU Proceedings

The IBL does not clearly regulate asset disposition and procedures during PKPU proceedings, other than that any ownership act (which includes the sale of assets) being conducted by the debtor requires the consent of the administrator. In practice, other than the sale of goods in the ordinary course of business for the purpose of continuation of the business, the sale of assets during PKPU proceedings is not very common.

Bankruptcy Proceedings

In bankruptcy proceedings, the procedures involve the reasonable protection that needs to be provided by the receiver to protect the interests of the secured creditors or another third party whose rights are stayed. The transfer of such assets by the receiver results in a condition where the in rem security right over the assets is deemed as terminated by the operation of law.

6.9 Secured Creditor Liens and Security Arrangements

See **5.1 Differing Rights and Priorities** on secured claims. In PKPU proceedings, the secured creditors' security arrangement can be released only if the composition plan releasing the security arrangements is approved by the relevant secured creditor.

6.10 Priority New Money

See **6.2 Position of the Company**.

6.11 Determining the Value of Claims and Creditors

PKPU proceedings and bankruptcy proceedings include the process of determining the creditors' value of claims through claim verification process. The outcome of the verification process will be used to calculate the number of votes that a creditor can cast on the voting on the debtor's composition plan.

6.12 Restructuring or Reorganisation Agreement

The IBL provides that the commercial court may only refuse to confirm the approved composition plan if:

- the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition plan; or
- implementation of the plan is not adequately assured; or
- the plan was concluded fraudulently or under the undue influence of certain creditors.

The commercial court in practice has almost never utilised this provision to refuse to confirm the approved composition plan.

At the time a bankruptcy or PKPU declaration is rendered, if there is an executory contract that has not yet or has only partially been fulfilled, the party with whom the debtor had contracted (the "Party") may request confirmation from the

receiver or administrator within a time period to be agreed by the receiver and the Party (the "Period") with regard to continuation of the performance of the contract (the "Contract"). Where no agreement on the Period is reached, the supervisory judge will determine a time period. If, within the Period or the time period stipulated by the supervisory judge, the receiver or administrator has not responded or confirmed that it is unwilling to continue the performance of the Contract, the Contract will terminate by operation of law and the Party may claim damages and be treated as an unsecured creditor. If the receiver or administrator declares their willingness, then the Party may request the receiver or administrator to provide security for his or her willingness to perform the Contract and the receiver or administrator must provide that security.

6.13 Non-debtor Parties

Non-debtor parties (not under bankruptcy/PKPU proceedings), in principle and theoretically, cannot be released from their liabilities on the basis of the composition plan being offered by the debtor.

In practice, however, there are some PKPU cases in which the debtor's composition plan releases non-debtor parties from their liabilities and the plan is formally approved by the creditors and confirmed by the commercial court.

6.14 Rights of Set-Off

Any person that has a debt to or a claim against a debtor can set off that debt or claim in bankruptcy or PKPU proceedings, provided that the debt or claim or any legal action raising the debt or claim has occurred prior to the commencement of the PKPU or bankruptcy proceedings.

6.15 Failure to Observe the Terms of Agreements

A creditor may request nullification of the composition plan if the debtor is negligent in fulfilling the content of the plan. If the commercial court decides to nullify the confirmed composition plan, it will:

- order the re-opening of the bankruptcy proceedings if the composition plan arose from earlier bankruptcy proceedings; or
- declare the debtor bankrupt if the composition plan arose from PKPU proceedings.

6.16 Existing Equity Owners

The IBL is silent on whether equity owners can receive or retain any ownership or other property on account of their ownership interests. However, equity owners can always receive or retain ownership or other property due to their ownership interests, to the extent that this does not relate to the debtor's assets.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

Insolvency and liquidation proceedings in Indonesia are court-supervised bankruptcy proceedings, regulated by the IBL. D&L proceedings are regulated by the ICL, but do not constitute court-supervised proceedings.

For bankruptcy proceedings, see **2.4 Commencing Involuntary Proceedings** and **6.1 Statutory Process for a Financial Restructuring/Reorganisation**.

While the IBL regulates bankruptcy proceedings in every detail, the ICL only regulates how the

D&L proceedings must be performed in general. A bankruptcy proceeding's special features/requirements (eg, the stay period, public auction assets' sale, the power to set aside a contract, requirements to become a liquidator, the possibility for a creditors' committee) do not exist in D&L proceedings.

See **4.2 Rights and Remedies** on the stay period, **6.12 Restructuring or Reorganisation Agreement** on executory contracts and **6.14 Rights of Set-Off** on set-off.

7.2 Distressed Disposals

In bankruptcy proceedings, the sale of assets is carried out by the receiver in a public auction. If the auction fails, the receiver may sell the assets through a private sale after obtaining approval from the supervisory judge.

In D&L proceedings, the sale of assets is done by the liquidator. There is no public-auction requirement for this purpose.

7.3 Organisation of Creditors or Committees

See **6.3 Roles of Creditors** and **7.1 Types of Voluntary/Involuntary Proceedings** on creditors' committees.

8. International/Cross-Border Issues and Processes

8.1 Recognition or Relief in Connection With Overseas Proceedings

Indonesia does not provide recognition or other relief in connection with restructuring or insolvency proceedings in another country, as Indonesia has not adopted the UNCITRAL Model Law, and no international treaty has been ratified to enable Indonesian courts to recognise restructuring or insolvency proceedings commenced in, or decisions issued in, another jurisdiction.

8.2 Co-ordination in Cross-Border Cases

There is no official or unofficial system of co-operation or protocols or other arrangements between the Indonesian courts and those in foreign jurisdictions to co-ordinate restructuring or restructuring or insolvency proceedings.

8.3 Rules, Standards and Guidelines

Although the Indonesian Private International Law in general allows the application of foreign law that is compatible with Indonesian law, there are unfortunately no rules, standards or guidelines with regard to applying foreign law, let alone to determining which jurisdiction's decisions, rulings or laws govern or are paramount.

8.4 Foreign Creditors

All creditors, whether domestic or foreign, are treated equally under Indonesian law. The IBL, nevertheless, contains specific provisions allowing creditors domiciled abroad to submit their claims in bankruptcy/PKPU proceedings after the expiry of the claim submission deadline, provided that certain other requirements are also fulfilled.

8.5 Recognition and Enforcement of Foreign Judgments

Unless there is an applicable convention between the State where the judgment is rendered and Indonesia, foreign court judgments will not be recognised and enforced by the Indonesian courts. Until now, no such convention has existed. A foreign court judgment could however be offered, accepted, and given such evidentiary weight as the Indonesian court may deem appropriate under the circumstances as to the applicable laws of that jurisdiction. In practice, there is a precedent where the commercial court

followed a foreign court (moratorium) judgment raised by a party in deciding a PKPU case. In this regard, the Indonesian courts have very broad fact-finding powers and a high level of discretion in relation to the manner in which those powers are exercised.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

A receiver is appointed in bankruptcy proceedings, while an administrator is appointed in PKPU proceedings. A liquidator will be appointed in D&L proceedings.

The person appointed as a receiver or administrator is either a licensed lawyer or licensed public accountant who has taken a special course, passed the examination and been registered with the Ministry of Law and Human Rights (Restructuring/Insolvency Professional).

There are no statutory/formal requirements to be a liquidator.

9.2 Statutory Roles, Rights and Responsibilities of Officers

The Receiver

The receiver has the following roles, rights and responsibilities (in bankruptcy proceedings):

- to manage and maximise the bankruptcy estate (eg, collecting claims);
- to continue the debtor's business;
- to verify the claims of the creditors (and prepare the list of creditors with their rankings) against the debtor's book;
- to verify the assets of the bankrupt debtor;
- to facilitate composition plan discussions and lead the voting process;
- to liquidate and settle the bankruptcy estate, if the bankruptcy estate is already in a state of insolvency (eg, through a public auction or private sale); and
- to distribute the liquidation proceeds to the creditors, in accordance with their rankings under the prevailing laws and regulations.

The Administrator

The administrator has the following roles, rights and responsibilities (in PKPU proceedings):

- to manage the debtor's estate and continue the debtor's business, together with the director of the debtor;
- to verify the claims of the creditors (and prepare a list of creditors with their rankings) against the debtor's book;
- to verify the assets of the debtor; and
- to facilitate the composition plan discussions and lead the voting process.

The receiver and administrator report to the supervisory judge and the commercial court.

The Liquidator

The liquidator has the following roles, rights and responsibilities:

- the recording and gathering of the company's assets and liabilities;
- to make the announcement concerning the plan for the distribution of assets/proceeds resulting from the liquidation process in the daily newspaper and state gazette of the Republic of Indonesia;
- the payment to creditors;
- the payment of the remaining balance of the assets resulting from the liquidation process to the shareholders; and

- other actions required to be undertaken to implement the settlement of the company's assets.

The liquidator reports to either the GMS or the district court that appoints them.

9.3 Selection of Officers

The commercial court may nominate a restructuring/insolvency professional as administrator or receiver based on a proposal from the petitioner, or at its own discretion. The commercial court may reject the nominated officers if they are not independent, have a conflict of interest or are handling three cases or more at the same time. Alternatively, officers of the Public Trustee will be appointed.

The commercial court may replace an appointed receiver/administrator based on:

- the proposal of the supervisory judge;
- the creditor's application, approved by more than half of the total creditors present at the creditors' meeting;
- the receiver/administrator's application;
- another receiver/administrator's application, if any; or
- the bankrupt debtor's application (for the receiver).

A liquidator is appointed by either the GMS or the district court's order.

10. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

10.1 Duties of Directors

Liability for a company could be attributed to a director after a company is declared bankrupt if the bankruptcy of the company is as a result of negligence of the BOD (or the BOC). In that case, if the assets of the company are not sufficient to cover the entire obligations of the company in the bankruptcy proceedings, each member of the BOD (and/or the BOC) is jointly and severally liable for the remaining obligations of the company that cannot be covered by the bankrupt company's estate. In order to claim against the BOD (and/or the BOC), a lawsuit needs to be filed by the receiver of the bankrupt company in order to prove the BOD's (and/or the BOC's) fault or negligence on the basis of tort under Articles 1365 and 1366 of the ICC. There could also be criminal liability under the Indonesian Penal Code for the BOD and/or the BOC.

Nevertheless, the members of the BOD and/or the BOC will not be liable if it can be proved that:

- the bankruptcy is not due to their fault or negligence;
- the BOD and/or the BOC conducted the management and supervision with good faith, prudence and full responsibility in the interests of the company and within the objectives and purposes of the company;
- the BOD does not have a conflict of interest, either directly or indirectly, over the management actions; and
- the BOD and/or the BOC took measures to prevent the bankruptcy.

10.2 Direct Fiduciary Breach Claims

While creditors may assert direct fiduciary breach claims against the directors outside bankruptcy, such a claim can only be asserted by the receiver in bankruptcy proceedings.

11. Transfers/Transactions That May Be Set Aside

11.1 Historical Transactions

The IBL provides that the bankruptcy receiver could request nullification of a transaction carried out by the debtor before its bankruptcy. The receiver must prove the following:

- that the transaction was performed by the debtor before it was declared bankrupt;
- that the debtor was not obliged by contract (an existing obligation) or by law to perform the transaction;
- that the transaction prejudiced the creditors' interests; and
- that the debtor and third party had or should have had knowledge that the transaction would prejudice the creditors' interests.

11.2 Look-Back Period

While there is no strict look-back period, the IBL imposes the burden of proof on a third party (to the transaction) for denying the existence of the knowledge that the transaction was detrimental to creditors for a transaction conducted within one year before the bankruptcy declaration.

For transactions conducted prior to one year before the bankruptcy declaration, the burden of proof rests with the receiver.

11.3 Claims to Set Aside or Annul Transactions

The IBL provides that claims to set aside or annul a transaction can only be asserted by the receiver in bankruptcy proceedings.

Outside bankruptcy proceedings, any concerned creditor may request nullification of a detrimental transaction carried out by the debtor under the ICC in which the burden of proof rests with the creditor.

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ABNR Counsellors at Law is one of Indonesia's top firms in the area of insolvency. With over 100 partners and lawyers (including two foreign counsels), ABNR is also the largest independent, full-service law firm in Indonesia and one of the country's top three law firms by number of fee earners, giving the firm the scale needed to handle large and complex transnational matters across a range of practice areas simultaneously. ABNR also has global reach as the exclusive Lex Mundi (LM) member firm for Indonesia since 1991. LM is the world's leading network of independent law firms, with members in more than 100 countries.

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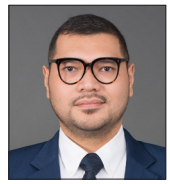

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