The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Indonesia: Restructuring & Insolvency

This country-specific Q&A provides an overview of the legal framework and key issues surrounding restructuring and insolvency in Indonesia.

This Q&A is part of the global guide to Restructuring & Insolvency.

For a full list of jurisdictional Q&As visit http://www.inhouselawyer.co.uk/practice-areas/restructuring-insolvency/

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What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

1. The in rem security interests in Indonesia are limited to those prescribed by Indonesian law. The

in rem security rights available under Indonesian law are the mortgage, the fiduciary security, the pledge, and the hypothec.

A mortgage (or Hak Tanggungan) is used to secure land with certain land titles and all fixtures attached to it. Other immovable assets, which arguably include land with land titles not qualified to be mortgaged and untitled land, movable, tangible and intangible assets (including but not limited to receivables, insurance proceeds, the intellectual property rights) can be secured by a fiduciary transfer (sometimes referred to as a fiduciary assignment). Assets which can be secured by a fiduciary transfer (other than immovable assets) can also be secured by a 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, which, in practice, most of the times are secured by a pledge. The moveable goods / inventory that are stored in the warehouse can be secured by a security right over warehouse receipt. A hypothec is used to secure registered vessel/ship in Indonesia, which must have gross tonnage of more than 20 cubic meter or equivalent to 7 Gross Tonnage. The aircraft object can be secured by the international interest arising from the security right granting agreement.

a. Mortgage

Based on No. 4 of 1996 concerning Mortgage ("Mortgage Law"), a mortgage may be encumbered on land rights, such as:

1. the right of ownership (hak milik);
2. the right of exploitation (hak guna usaha);
3. the right of building (hak guna bangunan); and
4. the transferable right of usage (hak pakai) on State Land.

A mortgage is limited to the particular plot of land described in the mortgage deed and only extends to buildings, fixtures and other immovable appurtenances to the land, including machinery affixed thereto, / if the terms of the mortgage expressly provide as such. A mortgage cannot be granted for land which is to be acquired in the future. The security right of the mortgage follows the mortgaged property notwithstanding any transfer of the property until the debt secured by such security has been paid.

The formalities that are required to establish the Mortgage is as follows:

1. the signing of the mortgage deed by and between the mortgagor and the mortgagee before the Land Officer / Conveyancer (Pejabat Pembuat Akta Tanah or "PPAT") with

jurisdiction over the land to be mortgaged. This deed must be in Indonesian and in the prescribed PPAT form;

2. the registration of the mortgage deed at the relevant Land Registration Office ("BPN"); The Mortgage is effective on the registration date.
3. the issuance of the Mortgage Certificate to the mortgagee, evidencing the registration of the mortgage deed with the Land Registration Book maintained by the BPN.

b. Fiduciary Security

Based on Law No. 42 of 1999 concerning Fiduciary Security ("Fiducia Law"), a fiduciary security takes the form of a written agreement by which the transferor transfers to the transferee its rights of ownership in respect of the transferred assets. Based on the fiduciary transfer agreement, the transferor transfers to the transferee its rights of ownership in respect of the assets for the time during which the debt under the agreement remains outstanding. "Possession" of the tangible assets remains with the transferor who is normally entitled to use or dispose of the assets in the ordinary course of business. The formalities that are required to establish the Fiducia Security is as follows:

1. the signing of the fiducia deed (setting out the fiduciary transfer agreement) by and between the fiducia transferor / assignor and the fiducia transferee / assignee before the Indonesian notary in Indonesian;
2. the registration of the fiducia deed at the relevant Fiducia Registration Office ("FRO"); Government Regulation No. 21 of 2015 regarding the Procedure for Registering Fiduciary Security and the Fee for Drawing Up a Fiduciary Security Deed requires the registration of the fiducia security to be performed through electronic system. The fiducia security is effective on the registration date.
3. the issuance of the Fiducia Security Certificate which is electronically signed by the FRO officer, to the fiducia transferee / assignee, evidencing the registration of the fiducia deed with the Fiducia Registration Book kept by the FRO.

c. Pledge

A pledge (pandrecht), as regulated in the Indonesian Civil Code (Articles 1150 through 1160) and Law No. 40 of 2007 concerning Limited Liability Companies ("Company Law") (Article 53, specifically dealing with a pledge over shares) can be created over tangible movable property (such as machinery, vehicles, equipment, cash physical coins and notes, stock, inventory) as well as over intangible movable property (such as shares, bonds, Indonesian government bonds, receivables, debentures, patents, the credit balance of a bank account and other personal rights). Pledge over movables assets other than shares of Indonesian company and bank account is rarely created in practice due to the requirement that the pledged object must be removed from the pledgor's possession and is physically transferred to the pledgee or a third

party agreed to by the pledgor and the pledgee (such as a custodian).

With respect to a pledge of intangible assets (such as shares and bank account), the requirement of “possession” or physical transfer means that the third party (such as the company (in case of pledge of shares) or the bank (in case of a pledge of bank account)), must be notified of the pledge. With respect to a pledge of shares and a bank account, the requirement of notification is generally considered to be complied with the registration of the pledge in the shareholders’ register of the company and the written acknowledgment from the bank where the bank account is opened.

There is no formal legal requirement to have a pledge agreement in writing. However, it is standard practice in Indonesia that pledges are embodied in a deed of pledge (notarized or executed privately) by and between the pledgor and the pledgee (and, under certain practice, the company which shares are pledged), setting forth the particulars of the pledge. Due to the application of the provision of the Law No. 24 of 2009 concerning National Flag, Language and Coat of Arm As Well As Anthem, the deed of pledge is in practice made in Bahasa Indonesia and/or bilingual.

For registered shares, the pledge of those shares is effected upon notification of the pledge of shares to the company in which the shares are held (normally evidenced by the company’s acknowledgment of receipt of the notice being issued to the pledgee) and the recording of the pledge in the company’s register of shareholders. For shares listed on a stock exchange in Indonesia (such as the Indonesia Stock Exchange), the company’s register of shareholders is kept by the Stock Administration Bureau appointed by the company. To create a pledge on listed shares, both the company and the Stock Administration Bureau must be notified of the pledge (normally evidenced by the company’s acknowledgment of receipt of the notice being issued to the pledgee), which will subsequently be recorded in the shareholders register held by the Stock Administration Bureau. For immobilized shares kept in the custody of the Indonesian Central Securities Depository (PT Kustodian Sentral Efek Indonesia or “PT KSEI”), PT KSEI will issue a confirmation letter certifying that the shares are pledged. For bank account, the pledge of bank account is effected upon notification of the pledge of shares to the bank which bank account is opened at and the bank will issue an acknowledgment letter to the pledgee certifying that the bank account is pledged.

Other than the registration of a pledge in the company’s register of shareholders for pledge of shares, and the acknowledgment letter from the bank for pledge of bank account, there is no registration system nor pledge registration office for security in the form of pledge.

d. Hypothec

A hypothec security right as regulated in the Indonesian Civil Code (Articles 1162 through 1232) initially can be created over immovable assets. However, since the enactment of the Mortgage Law and Law No. 1 of 2009 concerning Aviation ("Aviation Law"), land and/or real property as well as aircraft and helicopter are excluded from immovable assets which are subject to the provisions governing hypothec. Therefore, the objects of hypothec which are still applicable hitherto are registered vessels (having gross tonnage of more than 20 meter cubic or equivalent to 7 Gross Tonnage) (as regulated in Article 314 - 319 of the Indonesian Commercial Code as well as Law No. 17 of 2008 concerning Shipping ("Shipping Law")).

The Shipping Law provides that hypothec over vessel may only be encumbered on the vessel that is registered in Indonesia. A vessel can be registered in Indonesia if it complies with the following requirements:

- The minimum gross tonnage of the ship is 7 (seven) GT or more;
- The ship is owned by Indonesian person or legal entity which is duly established under Indonesian law and domiciled in Indonesia.
- If the ship is owned by a joint venture company, the shareholding structure of the company must consist of at least 51% Indonesian shareholder.

The formalities that are required to establish the Hypothec over vessel is as follows:

1. the signing of the hypothec deed by and between the hypothecor and the hypothecee made by the Vessel Registration and Ownership Recordation Officer (Pejabat Pendaftar dan Pencatat Balik Nama Kapal) with the jurisdiction over the place where the vessel is registered and recorded with the Vessel Main Registry (Daftar Induk Pendaftaran Kapal);
2. the issuance of the Hypothec Deed Certificate (locally known as Grosse Akta Hipotek) to the hypothecee, evidencing the recordation of the hypothec deed with the Vessel Main Registry.

If the above mentioned formalities are not complied with, the impact would be that the security right holders would lose their priority and privileged rights to obtain the fulfillment of their claims from the sale proceeds of the security object ahead of other creditors. Their claims will still remain valid, however they will be treated as unsecured claims.

2. What practical issues do secured creditors face in enforcing

their security (e.g. timing issues, requirement for court involvement)?

In general the issues that the secured creditors face in enforcing their security outside the restructuring and insolvency proceedings can be summarized into the following:

All laws mentioned in our response to question 1, except for the Aviation Law, provides that in the event of the debtor's default, the secured creditors will have the right to enforce their security rights based on:

a. the right of instant or direct execution (parate eksekutie)

The right of instant or direct execution is a right conferred by operation of law in which the secured creditors are entitled to sell the security object based directly on its own authority through a public auction without the consent from the collateral provider. In theory, based on this right of instant or direct execution, the secured creditors are entitled to have the security object sold by public auction and to apply the proceeds of the auction towards the repayment of any debt (without the need of an executorial title and without having to obtain a writ of execution (fiat executie) from an Indonesian court). Practically speaking, however, a parate executie can only be conducted if the collateral provider is cooperative. Further, in practice, parate executie has rarely been used since, among other reasons, the Indonesian State Auction Office will not allow a public auction without an Indonesian court order. The court order is also usually required by the purchaser of the security being auctioned / sold to prevent any future claims on the transaction. Therefore in practices, the secured creditor still has to submit petition for the issuance of the writ of execution for the enforcement of their security rights. The process to obtain this writ of execution from the district court, however, may take a relatively long time and involve complicated court bureaucracy. In addition, the public auction process would also take a considerable amount of time.

Particularly with regard to pledge of shares which are traded on a securities exchange in Indonesia, the law clearly specifies that disposal can be conducted in the market with the involvement of two brokers. In this case no court order is required so long as there is a power of attorney to dispose of the shares. However, there have been instances when there has a delay in transferring the title from the owner of the security being pledged to the buyer due to the reluctance of the registrar or broker to transfer the pledged shares on the grounds that they anticipated they would be sued if the transfer was conducted or the execution was contested in an Indonesian court by the owner of the asset in question.

b. the executory title in the Mortgage Certificate, Fiducia Certificate, Hypothec Deed Certificate

According to the Mortgage Law, Fiducia Law and Shipping Law, the Mortgage Certificate, Fiducia Certificate, Hypothec Deed Certificate possess executorial title which has the same status as a final and binding decision / judgement of an Indonesian court and confers on the holder the right to sell the security through a public auction after obtaining a writ of execution (fiat executie) from the relevant district court. The process of obtaining writ of execution and public auction will take a considerable amount of time.

c. the right to request the district court under Article 1156 of the Indonesian Civil Code in enforcing a pledge to:

a. determine the manner in which the pledged shares should be sold to repay the debt, plus interest and costs, or

b. permit the pledgee to acquire the pledged shares at such price to be determined by an Indonesian court.

The price thus determined by the court will be set off against the claim of pledgee. If, however, the court decides that the pledge must be enforced by public auction of the pledged shares, it will refer the matter to the State Auction Office. The pledgor will then be summoned by the court and the pledged shares will be sold in a public auction. If the pledgor is not the debtor, it is safe to assume that the pledgor or, as the case may be, the debtor will also be summoned.

d. private sale

The sale of the collateral in a private sale, may be effected based on the mutual consent of the collateral provider and the secured creditors after the debtor’s default. The Mortgage Law and Fiducia Law further requires that a private sale as collateral enforcement mechanism would only be allowed if the highest proceeds giving great benefit to both parties can be obtained.

<u>The issues specific to Fiducia Security enforcement</u>
Given the fact that the collateral are in the possession of the collateral provider, in order to enforce against the fiducia security object, the fiducia transferee / assignee must first obtain possession of the relevant goods from the fiducia transferor / assignor. According to the Fiduciary Law, the fiduciary transferor must deliver the fiduciary security object in the framework of implementation of the enforcement right over the fiduciary transfer. If the fiducia

transferor / assignor does not deliver the fiduciary security object when the enforcement is performed, the fiducia transferee / assignee is entitled to take possession over the fiducia security object and if necessary may request the assistance of the authorized parties for taking possession over the fiduciary security object.

In the absence of cooperation of fiduciary transferor / assignor to deliver such goods to fiducia transferee / assignee, the fiduciary transferee / assignee in practice would have to obtain a court order for attachment against the fiduciary security object before being able to enforce against such fiduciary security object. Such court order may be requested by fiduciary transferee / assignee, through a submission of an application to the relevant district court and providing necessary evidence required by such district court with respect to the fiduciary security. Once fiducia security object is attached, such goods may be sold by public sale or, if possible, by private sale.

In practice, it is often that the process of taking the possession of the fiducia security object is very costly and takes a significant amount of time. In fact, it is also often that the fiducia security objects are in bad / heavily damaged condition and/or no longer completed.

The issues specific to Hypothec of vessel enforcement

The vest territory of Indonesia will cause difficulty to detect the position of the hypotheced vessel. Under prevailing regulation, the writ of execution will be issued and commenced by the authorized court having legal jurisdiction in the area of hypothecor’s domicile. However the position of the hypotheced vessel may be located at the port outside the jurisdiction of court that rendered writ of execution. Since the execution shall be conducted at the port where the vessel is located, the court that issues writ of execution shall delegate the execution to another court having legal jurisdiction in the area of port where the vessel is located. This delegation may also incur some informal administrative court which needs to be paid by the hypothecee.

If the secured creditors attempt to enforce their security after the restructuring and insolvency proceedings have commenced, they may not be able to do so since their right to enforce their security are subject to a stay for the period of maximum 90 days as of a bankruptcy declaration is rendered in Bankruptcy Proceedings and during the entire period of the suspension of payments, which can reach up to maximum 270 days as of the suspension of payments decision is granted, in Suspension of Payments Proceedings.

What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

3. Under Indonesian law, the insolvency test for commencing insolvency proceedings within the

meaning of either “cash flow test” to determine a company is unable to pay its debts as they fall due or “balance sheet test” to determine the value of a company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, is not recognized.

The test for the relevant Indonesian commercial court (“Commercial Court”) to declare a company bankrupt responding a bankruptcy petition being filed under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Payments (Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)) (hereinafter shall be referred to as Indonesian Bankruptcy Law or “IBL”), is as follows:

1. the debtor has one due and payable debt;
2. the debtor has at least 2 (two) creditors (plurality of creditors); and
3. the above conditions can be summarily proven in each of the relevant proceedings.

The bankruptcy petition can be filed by one or more creditor(s), the debtor itself or the Public Prosecutor, if it is in the public interest.

IBL further provides that:

a. debtor “who cannot or foresees that he will not be able to continue paying his due and payable debts” may petition for PKPU for the general purpose of submitting a composition plan covering the offer to pay a part of or the entire debts to its creditors; or

b. creditor who foresee that a debtor is unable to continue paying his due and payable debts may petition for the debtor to be granted with PKPU which enable the debtor to submit a composition plan covering the offer to pay a part of or the entire debts to its creditors.

In practice, the requirements for declaring a debtor bankrupt will be imposed by the Commercial Court to grant the PKPU petition.

IBL imposes restrictions on who or what type of entity can commence an insolvency proceedings. Only particular institutions can petition for the bankruptcy or PKPU of certain debtors. For example (i) banks, by Bank Indonesia (the Indonesian central bank), (ii) securities companies by Otoritas Jasa Keuangan (Financial Service Authority, previously known as BAPEPAM-LK or the Indonesian Capital Markets – Financial Institution Supervisory Board), and (iii) insurance and re-insurance companies, pension funds, state-owned companies operating for

the public interest, by the Minister of Finance.

There is no mandatory obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent, except for certain situation. In fact, the Company Law would only allow a voluntary bankruptcy petition of a debtor in a limited liability form to be submitted by the board of directors of the debtor after obtaining prior approval from the General Meeting of Shareholders of such debtor which is attended by at least ¾ of the total shares with valid voting rights and approved by at least ¾ of the total amount of votes being casted in such meeting.

The only exception is when a debtor in a limited liability company form is already in the dissolution and liquidation process and the appointed liquidator estimates that the debts of such company are greater than the assets of the company. In this situation, the liquidator must file a bankruptcy petition against such company in liquidation. The Company Law that regulates this matter does not provide any clear legal consequences on the appointed liquidator that failed to do so, except that upon the request of the interested party or the district attorney, the chairman of the relevant district court may appoint new liquidator and dismiss the previous liquidator.

Please however note that the term insolvency under Indonesian law has a meaning that differs from those in many other legal systems: it does not constitute the test for bankruptcy declaration. The general meaning of the term ‘Insolvency” under the IBL refers to the specific concept of ‘the state of being insolvent at law’ which occurs (a) during the bankruptcy proceedings after the bankruptcy declaration has been rendered or during the PKPU proceedings after the decision granting the PKPU has been rendered and :

(i) no composition plan is submitted in the creditors meeting for the verification of claims, or

(ii) the composition plan is rejected in the voting process by the creditors, or

(iii) the composition plan is approved by the creditors but not ratified by the Commercial Court, or

(b) the final and binding ratified composition plan is nullified by the Commercial Court due to it is proven that the debtor is negligent in performing its obligations under the ratified composition plan.

4. **What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?**

IBL provides 2 (two) types of court sanctioned of insolvency proceedings that are applicable to Indonesian individuals, limited liability companies, limited partnerships, namely: (a) Bankruptcy Proceedings; and (b) PKPU Proceedings. Each procedure can be initiated by either the debtor itself or by its creditors.

The principal and conceptual difference between the two is that Bankruptcy Proceedings aim at liquidation and the PKPU Proceedings aim at continuation. However, the two are not principally opposed and can be used as needed by the situation at hand: Bankruptcy Proceedings are often used for reorganization of business by way of restart (if a composition plan is accepted by the creditors under voting mechanism and ratified by the Commercial Court) and PKPU Proceedings may result in liquidation (if the composition plan is rejected by the creditors under voting mechanism or fails to secure the Commercial Court's ratification).

In Bankruptcy Proceedings, the affairs of a bankrupt debtor are handled and managed by one or more court appointed receivers. The directors of the debtor lose their power to manage the bankrupt debtor's affairs and estate as such power is given to the receiver. The receiver is subject to the supervision of the court-appointed supervisory judge.

Unlike in the Bankruptcy Proceedings, 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 the court-appointed supervisory judge. In this regards, 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 over all or part of its assets without the approval of the administrator. Any violation of this provision will entitle the administrator to take any actions required to ensure that the debtor's assets are not jeopardized by the debtor's actions. The performance by the debtor without the administrator's consent of the debtor's obligation arising after the commencement of the PKPU proceedings, can only be imposed on the debtor's assets to the extent that the debtor's assets gain advantage/benefits from this performance.

Unrelated to insolvency issues there is another proceeding that is recognized by Indonesian law,

namely: the dissolution and liquidation proceedings regulated by Law 4/2007. This liquidation proceeding is different from the Bankruptcy / PKPU Proceedings in that it is a company/shareholder driven irreversible process which does not cater for the possibility of the debtor's restructuring and has no creditor vote.

With regard to the roles and involvements of the Commercial Court and other stakeholders play, it can be summarized into the following:

The Commercial Court has the following roles and involvements:

A. In Bankruptcy Proceedings

- grant or reject the bankruptcy petition being filed;
- declare the debtor bankrupt;
- appoint, add and/or replace the receiver;
- adjudicate the dispute regarding claim verification;
- adjudicate the creditor's objection to the list of proceeds distribution
- terminate the bankruptcy proceedings;
- determine the receiver's fee;
- adjudicate the preferential transfer/claw back (*actio pauliana*)claim filed by the receiver;
- adjudicate the receiver's claim against the board of directors of the bankrupt debtor that is/are fault and negligent in causing the bankruptcy estate insufficient to pay all of the bankrupt debtor's obligations.

B. In PKPU Proceedings

- grant or reject the PKPU petition being filed;
- declare the debtor in PKPU;
- appoint, add and/or replace the administrator;
- grant or reject the extension of the PKPU period;
- determine the administrator's fee

In both Bankruptcy Proceedings and PKPU Proceedings

- appoint the supervisory judge;

- ratify or reject the ratification of the approved composition plan;

The receiver has the following roles and involvements (in Bankruptcy Proceedings):

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

The administrator has the following roles and involvements (in PKPU Proceedings):

- manage the debtor's estate and continue the debtor's business together with the director of the debtor;
- verify the claims of the creditors (and prepare the list of creditor with its ranking) against the debtor's book;
- verify the assets of the debtor;
- facilitate the composition plan discussions and lead the voting process;

The supervisory judge has the following roles and involvements:

- supervise the receiver/administrator in performing its tasks;
- approve certain actions of the receiver which is required by IBL (e.g.: private sale of the bankrupt estate);
- decide on the claim verification dispute for the purpose of voting the composition plan.

Either the bankrupt debtor or the debtor in PKPU has the following roles and involvement:

- provide the receiver or administrator with the relevant information and documents;
- verify the claims being submitted by the creditors;

- submit the composition plan to be negotiated with the creditors;
- negotiate with the creditors on the terms of the composition plan.

The creditors have the following roles and involvement:

- submit and verify their claims to the receiver/administrator;
- form creditors committee;
- negotiate with the debtor on the terms of the composition plan;
- vote the composition plan.

With respect to the Bankruptcy Proceedings, IBL provides that the decision on the bankruptcy petition must be rendered by the Commercial Court within a period of 60 (sixty) days as of the date of registration of the petition. In practice however, the period that the Commercial Court takes in rendering its decision against a bankruptcy petition varies between 30 – 50 calendar days as of the registration of the relevant bankruptcy petition, depending upon the complexities of the case and the availability of the parties. The decision can be appealed to the Supreme Court in cassation not later than 8 (eight) days as of the Commercial Court's decision is rendered ("Cassation Filing Period"). The Commercial Court Registrar must deliver the cassation petition dossiers to the Supreme Court within not later than 14 (fourteen) days as of the cassation petition is registered. Within not later than 60 (sixty) days after the cassation petition has been received by the Supreme Court, the Supreme Court must decide whether to affirm or annul/overturn the Commercial Court decision.

In limited cases, a case review (peninjauan kembali) appeal can be made against a final and binding decision in the form of either (i) the Commercial Court's decision which is not appealed within the Cassation Filing Period; or (ii) the Supreme Court's decision in cassation. A case review may only be filed to the Supreme Court based on the following grounds:

a. when there is any decisive evidence discovered subsequent to the date of the final and binding decision is rendered which at the time of the proceeding at the Commercial Court / Supreme Court level in cassation had not yet been found;

In this case, the case review petition can be filed within 180 (one hundred eighty) days as of the date when the relevant court's decision being petitioned becomes final and binding.

b. if there is an obvious mistake or error made by the judges in the relevant decision.

In this case, the case review petition can be filed within 30 (thirty) days as of the date when the relevant court's decision being petitioned becomes final and binding.

The Commercial Court Registrar must deliver the case review petition to the Supreme Court Registrar within 2 (two) days as of the date the case review petition is registered. The Supreme Court must render a decision within 30 (thirty) days as of the date the case review petition is received by the Supreme Court Registrar.

IBL however does not a fixed timeline on the Bankruptcy Proceedings following the issuance of a final and binding bankruptcy declaration. Based on practice, the timeline can be summarized into the following:

- The deadline for the supervisory judge to render a decision to determine (i) the deadline for the creditors of the bankrupt debtor to submit claims; (ii) the deadline for tax claim verification; and (iii) the claim verification meetings: maximum 14 calendar days as of the bankruptcy declaration;
- Within 5 (five) days after the date the supervisory judge renders its decision, the receiver must announce such dates to all known creditors by letter and publication in at least 2 (two) daily newspapers
- The deadline the creditors of the bankrupt debtor to submit claims: based on practice, 2 – 8 calendar week as of the bankruptcy declaration;
- The deadline for the claim verification meetings: based on practice, around 6 - 10 calendar week as of the bankruptcy declaration
- The composition plan discussions: varies, may take few months (up to more than 5 months) before a voting on the composition plan is conducted.

Scenario A: the composition plan is approved by the creditors and ratified by the Commercial Court: The bankruptcy proceedings are terminated, and the timeline completed.

Scenario B: the composition plan is rejected by the creditors, or approved by the creditors but not ratified by the Commercial Court: the bankruptcy estate is declared in the state of insolvency and the timeline continues;

- The process to liquidate the bankruptcy estate and to distribute the liquidation proceeds to the creditors in line with the prevailing laws and regulations up to completion: varied from 1 – 5+ years as of the state of insolvency, depending upon the complexities of the bankruptcy assets to be sold.

With respect to the PKPU Proceedings, IBL provides that the Commercial Court must make a decision on the PKPU petition within not later than either (i) 3 (three) days of it being filed for voluntary PKPU petition (i.e.: being filed by the debtor itself); or (ii) 20 (twenty) days of it being filed for involuntary PKPU petition (i.e.: being filed by the debtor's creditor(s)). The decision being rendered by the Commercial Court in this case cannot be appealed. This rule does not prohibit any appeal being lodged. However, such an appeal normally will be rejected. If the Commercial Court approves the petition, the Commercial Court is required by law to grant the debtor a provisional PKPU for up to 45 days. The 45-day provisional PKPU may be extended up to maximum 270 days from the date the provisional PKPU is granted (and therefore becomes a permanent PKPU).

The same timeline element as those being described in the Bankruptcy Proceedings' timeline mentioned above should also be applicable to the PKPU Proceedings (except for the composition plan discussions element, which period is much more limited). If the composition plan being submitted is rejected by the creditors, or is approved by the creditors but not ratified by the Commercial Court during the PKPU proceedings period, a bankruptcy declaration will be rendered and the bankruptcy estate is automatically declared in the state of insolvency. Then, the same timeline element under the Scenario B of the Bankruptcy Proceedings will apply thereafter.

5. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?

There is no unified provision on the ranking of creditors' claims. The provisions on the ranking of claims are spread out in several legislations.

Generally in bankruptcy, the shareholders of the debtor rank behind all of the creditors in the distribution of the proceeds of the bankruptcy estate. Any distribution they receive is in proportion to the percentage of the shares that they hold in the debtor, if there are remaining assets after distribution to the creditors.

The creditors' claims are classified into several types, as follows:

a. Bankruptcy Estate claims (tagihan harta pailit);

The bankruptcy estate claims, also known as the 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;

2. costs in the liquidation of the bankruptcy estate or costs incurred in PKPU process (if commenced prior to the bankruptcy);

3. expert's fee being engaged during the proceedings;

4. post-bankruptcy financing;

5. lease of the bankrupt's house or offices during the bankruptcy proceedings; and

6. wages of the employees of the bankrupt debtor for the continued employment during the bankruptcy proceedings.

a. Preferred claims (tagihan preferen);
There are several types of preferred claims:

- The preferred claims that rank higher than the secured claims
  The preferred claims that rank higher than the secured claims will need to be paid from the entire bankruptcy estate, including but not limited the assets of the debtor that have been encumbered by in rem security rights being held by the secured claims, ahead from the unsecured claims, for example:
  - Outstanding wages (excluding severance payments and other rights) of the employees of the bankrupt debtor prior to bankruptcy declaration would rank higher than any claims

  2. Specific expenses stipulated by the Tax Law

     - legal expenses arising solely from a court order to auction movable and or immovable goods;

2. expenses incurred for securing the goods;

3. legal expenses, arising solely from the auction and settlement of inheritance;

4. Tax Claim, court charges which specifically result from the disposal of a movable or immovable asset (these must be paid from the proceeds of the sale of the assets over all other priority debts, and even over a pledge or mortgage), the legal charges, exclusively caused by sale and saving of the estate (these will have priority over pledges and mortgages).

2. The preferred claims that rank lower than the secured creditors
   Specific statutorily preferred creditors whose preference relates only to the debtor's specific assets, as stipulated by Article 1139 Indonesian Civil Code; If the specific relevant assets are subject to in rem security rights of the secured claim, the secured claim will rank higher.

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

   General statutorily preferred creditors relates to the debtor's assets in general, as stipulated by Article 1149 Indonesian Civil Code (for example: revenue authorities, outstanding rights of the employees of the bankrupt debtor other than outstanding wages, e.g.: severance payments).

b. Secured claims (tagihan separatis);
The secured claims are the 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.

c. Unsecured claims (tagihan konkuren);
The unsecured claims are the claims that are not secured with any in rem security rights and do not have any privilege being granted by the prevailing laws and regulations. They will be paid from the assets under the bankruptcy estate which have not been encumbered by in rem security rights being 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 recognized under Indonesian law as there is no provision under IBL empowering the Commercial Court, the receiver, the administrator, or the supervisory judge with the authority to subordinate the creditor's claim of any class.

Nevertheless, please note that IBL provides the secured creditors:
(i) that is able to prove that part of their secured claims would not be possible to be settled from the sale proceeds of the security, with a right to request the unsecured claims' right to be granted to such part of their secured claims, without jeopardizing their privilege rights over the security;

(ii) intending to cast 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;(iii) whose secured claims cannot be entirely fulfilled from the sale proceeds of the security to have the unpaid secured claims converted as unsecured claims.

6. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

A transaction that is entered into by the debtor within a specific period before the declaration of the debtor's bankruptcy may be nullified by the Commercial Court upon a claim submitted by the receiver in accordance with the provisions of IBL. This legal remedy is known as 'action pauliana' suit.

The nullification of a legal action or transaction made by the debtor may be granted by the Commercial Court upon the lawsuit of the receiver if the receiver can prove the following requirements:

a. The legal action being challenged is performed by the debtor before the bankruptcy declaration is rendered;

b. The debtor is not obligated by contract or by law to perform such legal action being challenged, or in other words the legal action is voluntarily conducted by the debtor;

c. The legal action being challenged prejudices the creditors' interests; and

d. The debtor and the other party with whom the debtor conducts the legal action being challenged know or supposed to know that the said legal action will cause damages for the creditors.

With respect to the last requirement, both the debtor and the third party with whom the legal action being challenged was performed were deemed to know that such transaction was detrimental to the creditors (unless it can be proven otherwise) in the event:

(a) the legal actions or transactions being challenged were conducted within the period of one (1) year before the debtor's bankruptcy and the transaction was not mandatory for the debtor and such transaction belongs to one of the following three categories:

1. a transaction in which the consideration that the debtor received was substantially less than the estimated value of the consideration given;
2. a payment or granting of security for debts which are not yet due;
3. a transaction entered into by an individual debtor with a certain relative or related parties

(b) the grant transaction being challenged was conducted within the period of one (1) year before the debtor's bankruptcy

The nullification of the payment of debt that has been due and payable can only be granted if it can be proven that: (i) the recipient of payment (i.e. the lender) know that the petition of bankruptcy against the debtor had been registered; or (ii) in the event that the said payment is made due to the conspiracy between the debtor and the creditor(s) in order to provide the said creditor(s) privilege than the other creditors.

The effect of a successful challenge would cause the legal action or transaction being challenged is considered as nullified (some court decisions deemed such action as unlawful act) and therefore the condition prior to the execution of the legal action or transaction should be restored.

IBL specifically provides the following consequence on the successful challenge:

- Any persons receiving properties/goods that constitute part of the debtor's assets which are covered by the legal action being nullified ("Goods") must return the Goods to the receiver and it shall be reported to the supervisory judge. If such person is not able to return the Goods in the condition before the legal action is taken, such person should pay compensation to the bankruptcy estate;
- The right of any third parties over the Goods, which are obtained in good faith and not free of charge, (including the holder of the security rights being imposed on the Goods) should be protected;
- For the goods being received by the debtor under the legal actions being nullified, the receiver should return it or its value to the other party with whom the debtor conducts the legal action, to the extent that the bankruptcy estate is not jeopardized. If there is outstanding difference that needs to be returned to the other party with whom the debtor conducts the legal action, such party may verify such difference as unsecured claim.

7. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Upon the issuance of the Commercial Court decision declaring the bankruptcy of the debtor or granting the provisional PKPU, an automatic stay or moratorium of the debtor's estate will be triggered. The rights of secured creditors' to enforce security (and the rights of any third parties to claim its assets that are under the control of the bankrupt debtor / debtor under the PKPU or the receiver/administrator) are subject to the automatic stay for a maximum of 90 (ninety) days in Bankruptcy Proceedings and the entire duration of the PKPU Proceedings. Under the Bankruptcy Proceedings, the automatic stay period may be less than 90 (ninety) days if the bankruptcy proceedings are terminated earlier or if the debtor enters the state of insolvency.

The automatic stay in this provision is aimed at:

a. increasing the possibility of composition; or

b. increasing the possibility to optimize the bankruptcy estate; or

c. enabling the receiver/curator to perform its duties optimally.

During the stay period under Bankruptcy Proceedings, no legal actions in order to obtain payment in respect of receivables may be brought before any court and the creditor and any third party are prohibited from executing or requesting attachment in respect of the collateral. During the stay period under the PKPU Proceedings:

- the payment of debts to unsecured creditors cannot be made unless the payment is made to all creditors proportionally;
- the debtor is not excused from making payments to its secured creditors;
- if the debtor fails to pay the secured creditors, they are unable to enforce their security rights as they will be subject to a stay of proceedings for the full duration of the PKPU.

The stay mentioned above in both proceedings however is not applicable to the creditors' claim that is secured with cash and the right of creditors to apply the set-off.

During the stay period, the receiver / administrator can use the bankruptcy / debtor's estate in the form of either moveable or immoveable assets or sell the bankruptcy / debtor's estate in the form of moveable assets under the control of the receiver in the framework of the continuation of the business of the bankrupt debtor / debtor in PKPU, when the reasonable protection for the interest of the secured creditors or the relevant third parties have been provided.

The elucidation of IBL further provides that the bankruptcy / debtor's estate that can be sold by the receiver / administrator is limited to the inventory and/or current assets (moveable assets), although such assets are encumbered with in-rem security rights. Further, the reasonable protection refers to the protection that needs to be provided to protect the interest of the secured creditors or other third party whose rights are stayed. The transfer of such assets by the receiver / administrator results in the condition where the in-rem security right over the assets is deemed as terminated by the operation of law.

The protection may be in the form of among others:

a. the compensation on the decrease of the value of the bankruptcy / debtor's estate;

b. the net proceeds from the sale;

c. the replacement of in rem security rights;

d. the reasonable and fair of the compensation as well as other cash payments (of the debt being secured).

IBL provides that as of the bankruptcy declaration of the debtor (i) any ongoing lawsuit against the debtor, in which the plaintiff requests for fulfillment of debtor's payment obligation from the bankruptcy estate, shall by operation of law terminate; and (ii) any court enforcement order on any part of the bankruptcy estate which has been commenced before the bankruptcy declaration of the debtor is rendered shall immediately terminate and no further decision can be enforced. Any existing court attachment order that have been imposed on the bankruptcy estate shall be removed and, if necessary, the supervisory judge shall render an order to exercise the said removal (especially for the attachment over the registered land or vessel).

Notwithstanding the foregoing, if prior to the bankruptcy declaration of the debtor, the process for selling the debtor's movable or immovable assets in the context of enforcement has reached a point that the selling date has been determined, then based on the approval from the supervisory judge, the receiver may continue the said sale on the expense of the bankruptcy estate and the sale the proceeds will constitute the bankruptcy estate (instead of being given to the petitioner for enforcement).

IBL provides that the bankruptcy estate shall include the entire property of the debtor at the time of the bankruptcy declaration as well as any property which he obtains in the course of the bankruptcy. In addition, IBL requires a creditor to compensate the bankruptcy estate or the debtor's estate in PKPU in the amount that he has received in the case:

- He who has no privileged right receives payments from the bankruptcy / debtor's estate in PKPU located abroad after the bankruptcy declaration / PKPU decision;
- He transferred all or part of his claims on the bankrupt debtor / debtor in PKPU to the third party with the intention that such third party will have privileged right for obtaining payments for such claims from the debtor's assets located abroad (and will be deemed to have the knowledge that bankruptcy declaration / PKPU decision has been or will be rendered, unless can be proven otherwise);
- He who transferred all or part of his claim/debt to third party which therefore has the opportunity to set-off abroad which is not permitted by IBL (will be deemed to have the knowledge that that bankruptcy declaration / PKPU decision has or will be rendered, unless can be proven otherwise).

Based on these provisions, it is viewed that the stay or moratorium under IBL in both Bankruptcy Proceedings and PKPU Proceedings shall have extra-territorial effect.

Further, IBL provides the secured creditors with a set of procedures for seeking relief from an automatic stay. According to IBL, the creditors or third parties whose rights have been stayed the possibility to file a petition to the receiver / administrator for the lifting of the stay or to amend the conditions of such stay ("Lifting Stay Petition"). If the receiver / administrator rejects this Lifting Stay Petition, that creditor or the third party may file the Lifting Stay Petition to the supervisory judge. The supervisory judge must, not later than 1 (one) day after receipt of the petition, order the receiver to immediately, by registered mail or courier, summon the said creditor and third party to be heard at the hearing on this Lifting Stay Petition. The supervisory judge must render a decision upon the Lifting Stay Petition within not later than 10 (ten) days as of the date the Lifting Stay Petition is submitted to the supervisory judge.

In rendering the said decision, the supervisory judge shall take into consideration the following:

a. the length of the stay period which has already elapsed;

b. the protection of the interests of the creditor and any related third party;

c. the possibility of composition being reached;

d. the impact of the stay on the operation and management continuity of the debtor's business and the settlement of claims against the bankrupt estate.

The matters to be considered by the supervisory judge do not limit the supervisory judge to consider other matters, to the extent it is necessary to safeguard and optimize the value of the bankruptcy estate.

The decision of the supervisory judge on the Lifting Stay Petition may take the form of either (a) a lifting of the stay for one or more creditors and/or (b) the imposition of conditions concerning (i) the length of the stay period and/or (ii) one or more security rights that may be enforced by the creditors. If the supervisory judge refuses to lift or amend the conditions of the stay, the supervisory judge is obligated to order the receiver to take adequate measures to protect the interests of the petitioners. Against this decision of the supervisory judge, the creditors or the third parties submitting this Lifting Stay Petition or the receiver may submit an objection to the Commercial Court no later than 5 (five) days after the date of rendering of the decision. The Commercial Court is obligated to decide on this objection within not later than 10 (ten) days as of the date of the objection is received. No appeal (in the form of either cassation or case review petition) may be submitted against the decision of the Commercial Court.

8. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play?

As discussed in question 4, the restructuring and rescue procedures that are available under IBL are: (a) Bankruptcy Proceedings; and (b) PKPU Proceedings. The issue on (i) the entry requirement of both proceedings; (ii) the involvement of the management in the operation of the business (as well as the applicable supervision); and (iii) the roles that the court and other stakeholders play have been discussed in question 3 and 4.

With respect to how a restructuring plan approved can be summarized in the following:

Bankruptcy Proceedings
After a bankruptcy declaration is rendered, the bankrupt debtor is entitled to submit a composition plan (containing restructuring plan) to all of its creditors and must provide this plan at the latest 8 (eight) days before the scheduled claim verification meeting in the court registrar (if the bankrupt debtor still intends to do so). The discussion regarding the plan and the decision thereof would be postponed until subsequent meeting which date will be decided by the Supervisory Judge falling on a maximum of 21 (twenty-one) days thereafter under certain circumstances.

Further, the secured creditors are not entitled to cast vote in the voting process in accepting or rejecting the submitted composition plan, unless they have releases their priority and privileged right prior to the voting process and therefore becoming unsecured creditors. In the event that the composition plan is rejected, the secured creditors releasing their priority rights will remain to have the status of unsecured creditors. In addition, the secured creditors who can prove that a part of their claims is unlikely to be settled from the proceeds of the sale of their security, may request to be given the rights of unsecured creditors with respect to this part of such claims, without prejudice to their preferential rights on the security for their claims.

The decision to approve the composition plan requires the affirmative votes of: (a) more than half of the unsecured creditors, who are present or represented at the meeting, whose rights

are acknowledged or provisionally acknowledged; and (b) 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;

If more than half of the creditors, who are present or represented at the meeting, representing at least half of the total amount of the claims having voting rights, approve the composition plan, within 8 (eight) days of the date the aforesaid (first) voting process is held, a second voting process must be held and the creditors are not bound to the vote given in the first voting.

The Supervisory Judge must determine the schedule for the Commercial Court to hold a hearing for receiving the supervisory judge's report and hearing the arguments of the creditors (including the dissenting creditors) and the bankrupt debtor in relation to the approval or rejection of the plan. At this hearing or at the latest within 7 (seven) days of this hearing, the Commercial Court must decide whether or not to ratify the approved composition plan together with its grounds. The Commercial Court may only refuse to ratify 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 the ratification of the approved plan is granted by the Commercial Court, the dissenting creditors or the creditors who do not attend the voting process or the approving creditors realizing that the plan was concluded fraudulently or under undue influence of certain creditors within not later than 8 (eight) days as of the ratification may file petition for cassation against such decision to the Supreme Court in cassation. The petition for case review can also be submitted under the case review grounds and rules. If the ratification approval decision has become final and binding, the composition plan binds all unsecured creditors without exception.

If the ratification of the approved plan is rejected, either the approving creditors or the debtor within not later than 8 (eight) days of this rejection may file a petition for cassation to the Supreme Court in cassation.

A final composition plan to be voted can be submitted only once. If (i) no composition plan is submitted in the creditors meeting for the claim verification, or (ii) the composition plan is rejected in the voting process by the creditors, or (iv) the composition plan is approved by the

creditors but the ratification was rejected by the Commercial Court and such decision has become final and binding or (v) the composition plan is approved and the ratification was approved by the Commercial Court but was later on overturned by the Supreme Court, either in cassation or case review so that the ratification rejection decision has become final and binding, the bankruptcy estate will be declared to be in the state of insolvency.

PKPU Proceedings

After a decision granting the debtor a provisional PKPU is rendered, the debtor is entitled to submit a composition plan to all of its creditors.

A meeting of creditors must be called within 45 (forty five) days of granting a provisional PKPU. At this meeting, the secured and unsecured creditors must:

- approve the composition plan, if a plan has been submitted to the Commercial Court; or
- agree to convert the provisional PKPU into a permanent PKPU for a or several period(s) of cumulatively up to 270 (two hundred seventy) days from the date of granting the provisional PKPU; or
- reject the composition plan or the request to convert the provisional PKPU into the permanent PKPU, in which cases the debtor will subsequently be declared bankrupt (at this stage, the bankruptcy estate will immediately be in the state of insolvency and the debtor no longer has the opportunity to submit a composition plan/proposal to its creditors).

In the voting process at the creditors' meeting, the decision to approve the composition plan or to extend the PKPU period or to grant a permanent PKPU requires the affirmative cumulative votes of:

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

If more than half of the creditors, who are present or represented at the meeting, representing at least half of the total amount of the claims having voting rights, approve to accept the composition plan, within 8 (eight) days of the (first) voting process held, the second voting

process must be held and the creditors are not bound to the vote given in the first voting.

If a composition plan is approved, the dissenting secured creditors must be compensated by the lowest value of either the collateral (can be selected between the collateral value being determined by the collateral documents or collateral value being determined by appraiser being appointed by the supervisory judge) or the actual claim directly secured by in rem security rights.

At a pre-determined date, a hearing will be held by the Commercial Court to receive the report of the Supervisory Judge and hear the arguments of the administrator, the creditors (including the dissenting creditors) and the debtor in relation to the approval/rejection of the plan. At this hearing or at the latest within 14 (fourteen) days of such hearing, the Commercial Court must decide whether or not to ratify 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 the ratification of the approved plan is granted by the Commercial Court, the petition for cassation can be submitted by the creditor of the debtor against such decision to the Supreme Court within not later than 8 (eight) days of the reading out of this decision. The petition for case review can also be submitted under the case review grounds and rules. If the ratification approval decision has become final and binding, the composition plan becomes binds all secured and unsecured creditors, except for the dissenting secured creditors.

If the Commercial Court decides to reject the ratification of the approved composition plan, no legal remedy is available, except for the case review petition which needs to be submitted under the case review grounds and rules.

A final composition plan to be voted can be submitted only once. If (i) no plan is submitted and the request to extend the PKPU fails to be granted by the creditors or (ii) no composition is approved by the creditors after the maximum period for PKPU (i.e.: 270 (two hundred seventy) days as of the provisional PKPU is granted) expires or (iii) the plan is rejected in the voting process by the creditors or (iv) the plan is approved by the creditors but the ratification was rejected by the Commercial Court and such decision has become final and binding or (v) the

composition plan is approved and the ratification was approved by the Commercial Court but was later on overturned by the Supreme Court, either in cassation or case review so that the ratification rejection decision has become final and binding, bankruptcy will immediately be declared and the bankruptcy estate will be in a state of insolvency.

With respect to how a restructuring plan implemented can be summarized in the following: According to IBL, a creditor of the bankrupt debtor / debtor under the PKPU proceedings, can request the Commercial Court to nullify a final and binding ratified composition plan if the debtor is negligent in fulfilling the content of the ratified composition plan. The debtor is obligated to prove that the ratified composition plan has been fulfilled. The Commercial Court is authorized to grant a one time grace period to the debtor to fulfil its obligations within not later than 30 (thirty) days, commencing as of the date the decision granting the grace period is read out. If the Commercial Court decided to nullify the ratified composition plan, it will order to re-open the bankruptcy / declare the debtor bankrupt by appointing a Supervisory Judge, a receiver and the members of creditors committee (if under the previous bankruptcy proceedings, the creditors committee exists.)

9. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Yes, a debtor in both restructuring proceedings can obtain new financing.

The receiver in Bankruptcy Proceedings or the debtor with prior approval from the administrator in PKPU Proceedings, PKPU may obtain loan from a third party only in the framework of increasing the value of the bankruptcy / debtor’s estate. However, if the loan requires in rem security rights to be imposed on the bankruptcy / the debtor’s estate, the loan should be previously approved by the supervisory judge. The in rem security rights can only be encumbered on the bankruptcy / debtor’s asset which has not yet been used as debt collateral / encumbered with any security rights. PKPU

Although in theory (based on the statutory limited purpose of increasing the value of the bankruptcy / debtor’s estate), the claim arising from the new financing in the restructuring proceedings should rank as the bankruptcy estate claim, Law No. 37/2014 does not explicitly confirm that it is the case.

10. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

No, the restructuring proceedings cannot release claims against non-debtor parties, especially the claim against the guarantors of the debtor and the claim against the director of the debtor.

IBL clearly stipulates that although a composition is reached in Bankruptcy Proceedings, the creditors still have the rights against the guarantors and co-debtors. Further, IBL also states that the PKPU do not apply to the benefit of the co-debtors and the guarantors.

On the claims against directors of the debtor, the personal liabilities of the directors (and the commissioners) of a company to the third party, including those under the Company Law (e.g.: due to his/her fault or negligence in performing its task, incorrect or misleading financial report) should not be released due to the company's restructuring proceedings.

11. Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities to they have? Are they permitted to retain advisers and, if so, how are they funded?

Although the creditor committees are regulated by IBL, it is often that no creditor committees were established in the restructuring proceedings.

In Bankruptcy Proceedings, the Commercial Court may form a temporary creditor committee consisting of 3 creditors chosen from the known creditors for the purpose of giving advice to the receiver. After the claim verification process is completed, the supervisory judge must offer the creditors to establish a permanent creditor committee. Upon the request of the unsecured creditors, based on the decision of the majority of the unsecured creditors in a creditors meeting, the supervisory judge change the temporary creditor committee (if already formed) or form a creditor committee (if has not been formed). At any time, the creditor committee is entitled to inspect all books, documents and letters regarding the bankruptcy. The receiver

must disclose to the creditor committee all information being requested. If required, the receiver may meet the creditor committee for asking advice. The receiver must request the view of the creditor committee's view before filing lawsuit, continuing ongoing court case, oppose an ongoing lawsuit. The receiver is not bound by the creditor committee's view. If creditor committee may request the supervisory judge to issue an order regarding the view of the creditor committee which is not agreed by the receiver. The creditor committee must provide its written opinion concerning the composition plan being submitted by the debtor.

In PKPU Proceedings, the Commercial Court shall appoint a creditors committee if:

- the petition for the PKPU covers a complex debts or numerous creditors; or
- such appointment is desired by the creditors representing at least ½ of the total acknowledged claim.

If a creditor committee is established, the administrators must request and consider the recommendation from the creditor committee in conducting their tasks.

IBL is silent on the retention of advisers by the creditor committee and how they are funded. Nevertheless, IBL provides that the supervisory judge in both proceedings may appoint experts to conduct examination and prepare report concerning the bankruptcy / debtor's estate condition. In PKPU proceedings, the expert's fee shall be determined by the supervisory judge and must be paid in advance from the debtor's estate.

12. How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any an ability for either party to disclaim the contract?

The Bankruptcy Proceedings and the PKPU Proceedings, in principle, do not change or affect the validity of the terms of the existing contracts that the debtor had previously entered into. The rights and obligations of the parties to such contract remain unchanged. Whether the parties are obliged to continue to perform their obligations would depend on the terms of the contract.

Regardless the terms of the contract, however, if after the Bankruptcy Proceedings and the PKPU Proceedings commenced, the contract has not yet or has only partially been fulfilled, then

the debtor’s counterparty may request confirmation from the receiver / administrator with regard to the continuation of the performance of the contract within a time period to be agreed by the receiver / administrator and the counterparty. Where no agreement on the period is reached, the supervisory judge shall determine a time period. If within the period agreed or stipulated by the supervisory judge, the receiver / administrator has not responded or is unwilling to continue the performance of the contract, the contract shall terminate and the counterparty may claim damages and shall be treated as an unsecured creditor. If the receiver / administrator declares his willingness, then the counterparty may request the receiver / administrator to provide security for his willingness to perform the contract and the receiver / administrator should provide such security.

If the receiver / administrator has not responded or is unwilling to continue the performance of the contract, the termination provisions in these contracts should no longer enforceable.

If there are contractual delivery of goods commonly traded items in the contract imposing a certain time limit, and the party obliged to deliver them is declared bankrupt prior to delivering them, the contract is terminated by the bankruptcy / PKPU declaration. The parties harmed thereby may name themselves unsecured creditors to claim compensation. However, if the termination causes harm to the bankruptcy / debtor’s estate, the counterparty to the contract must compensate for the losses of the bankruptcy / debtor’s estate.

If the bankrupt debtor / debtor in PKPU has been leasing certain objects, either the receiver / the debtor, with the consent of the administrator or the lessor, may terminate the lease agreement, but a prior termination notice must be served in accordance with the local custom, or the notice period stated in the lease agreement or according within 90 days. If the lease fee has been paid in advance, the lease agreement cannot be terminated early before the lease period covered by the lease fee expires. As of the bankruptcy / PKPU declaration, the lease fee should constitute the bankruptcy estate’s debt.

With regards to retention of title provision in these contracts, such provision should be enforceable. However, the repossession of the goods that are subject to the retention of title provisions should be subject to the stay period.

With regards to set-off provision in these contracts, regardless the enforceability of the set-off provisions in the contracts, IBL provides that any person that has a debt to and a claim against a debtor under Bankruptcy / PKPU Proceedings, he can set-off such debt and claim, provided that:

a. the debt and the receivable already existed prior to the declaration of the debtor's bankruptcy/PKPU; or

b. the debt and the receivable exist as a result of actions carried out by the debtor before the declaration of the debtor's bankruptcy/PKPU.

A person who has taken over the debt or receivables from a third party prior to the pronouncement of bankruptcy declaration or the PKPU cannot exercise a set-off if: (i) the taking over of the debt and receivables was not based on good faith; and/or (ii) the taking over of the debt or receivables was done after the pronouncement of bankruptcy declaration or after the initiation of the PKPU process.

While the ability for the receiver / administrator to disclaim the contract does exist as discussed above, the ability for the counterparty to disclaim the contract would depend upon the terms of the contract.

13. What conditions apply to the sale of assets/the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

The conditions apply to the sale of assets / the entire business in insolvency process are as follows:

In Bankruptcy Proceedings, any of the bankrupt debtor' assets must be sold by way of public auction according to the applicable laws and regulations. If the public auction of the bankruptcy estate cannot be achieved, the sale can be conducted privately with prior approval from the supervisory judge.

In PKPU proceedings, the debtor is entitled to sell its assets with prior approval from the administrator. IBL is silent on this issue as to whether or not the debtor in PKPU may sell its entire business. However, it is unlikely that the debtor sells its entire business since any restructuring being proposed to settle its debts under the composition plan would rely on the operation of some of its existing business.

IBL is silent on whether the purchaser acquires the assets ‘free and clear’ of claims or some liabilities pass with the assets. As such, based on general provisions of Indonesian Civil Code, it will be subject to the provisions mutually agreed in the sale and purchase agreement. Also, it is provided that the party acquiring the assets has to be well informed regarding the conditions of the assets and the debtor. In general, however, aside from (i) the in rem security right or (ii) the retention right or (iii) the rights of specific statutorily preferred creditors whose preference relates only to the debtor’s specific assets, being imposed on the assets being purchased by the purchaser, the claims on or the liability of the debtor in general should not pass with the assets to the purchaser.

Yes, the security can be released without creditor’s consent on certain circumstances. During the stay period in both Bankruptcy and PKPU Proceedings, the receiver / administrator can use the bankruptcy / debtor’s estate in the form of either moveable or immoveable assets or sell the bankruptcy / debtor’s estate in the form of moveable assets under the control of the receiver / administrator in the framework of the continuation of the business of the bankrupt debtor / debtor in PKPU, when the reasonable protection for the interest of the secured creditors or the relevant third parties have been provided. The bankruptcy estate’s assets that can be sold by the receiver / administrator is limited to the inventory and/or current assets (moveable assets), although such assets are encumbered with in rem security rights. Further, the reasonable protection refers to the protection that needs to be provided to protect the interest of the secured creditors or other third party whose rights are stayed. The transfer of such assets by the receiver / administrator results in the condition where the in rem security right over the assets is deemed as terminated by the operation of law.

The protection may be in the form of among others:

a. the compensation on the decrease of the value of the bankruptcy estate;

b. the net proceeds from the sale;

c. the replacement of in rem security rights;

d. the reasonable and fair of the compensation as well as other cash payments (of the debt being secured).

IBL does not recognize credit bidding in the sale of the bankruptcy / debtor’s estate under the Bankruptcy / PKPU Proceedings. The creditors may not purchase the debtor’s assets and make payment of the purchase price by reducing the amount of its claim against the debtor.

IBL also does not recognize pre-packaged sales in the sale of the bankruptcy / debtor's estate under the Bankruptcy / PKPU Proceedings. Theoretically, due to the public auction requirement for the sale of the bankruptcy / debtor's estate under the Bankruptcy / PKPU Proceedings, it is impossible to have pre-packaged sales whereby an arrangement under which the sale of all or part of a bankruptcy/debtor's business or assets is negotiated with a purchaser prior to the commencement of the Bankruptcy / PKPU Proceedings, and the court-appointed receiver / administrator effects the sale immediately on, or shortly after, his/her appointment. If the public auction is not successful, an approval from a supervisory judge is required for the private sale of the assets to a purchaser.

14. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?

The Company Law in conjunction with the Indonesian Civil Code provisions on tort provides the possibility of a company or the Board of Directors / Commissioners of such company committing tort which cause losses to the third party. A director may be deemed as liable under tort if a contract is entered into on behalf of the debtor and the director of the debtor knows or should know that the company cannot, or cannot within a reasonable period of time, perform its obligations and the third party / creditor's loss resulting from the breach of contract cannot be paid from the debtor's assets.

The Company Law clearly states that every member of the Board of Directors / Commissioners of the debtor shall be jointly, severally and fully personally liable:

(a) for the losses of the debtor if the relevant director / commissioner is proven to be at fault or negligent in the performance of his/her duties in managing the Company with good faith and full responsibility for a director or in supervising and advising the Board of Directors for a commissioner, unless each of them can prove that:

i. for the Board of Directors:

- the losses do not result from his/her fault or negligence;
- he/she has conducted the management in good faith and prudence in the interest of the

debtor and within the objectives and purposes of the debtor;

- he/she has conducted the management in good faith and prudence in the interest of the debtor and within the objectives and purposes of the debtor; and
- he/she has taken preventive measures against the arising or continuation of losses. ["Has taken preventive measures against the arising or continuation of losses" also includes steps to have access to information about the acts of management that result in losses, inter alia, through a forum of a meeting of the Board of Directors.]

ii. for the Board of Commissioners:

- he/she has made supervision in good faith and prudence in the interest of the debtor and within the objectives and purposes of the debtor;
- he/she has no personal interest whether directly or indirectly in the acts of management of the Board of Directors that result in losses; and
- he/she has given advice to the Board of Directors to prevent the arising or continuation of losses.

and;

i. if (i) the relevant director / commissioner is proven to be at fault or negligent which leads to the bankruptcy declaration of the debtor and the (ii) assets of the bankrupt debtor are not sufficient to settle the entire obligations of the debtor, for the unpaid claims of the bankrupt debtor's creditors (This also applies to those holding director / commissioner position within 5 years prior to the bankruptcy declaration), unless each of them can prove that:

a. the bankruptcy is not due to his/her fault or negligence;

b. he/she has conducted the management (for director) / supervision (for commissioner) in good faith, prudence, and full responsibility in the interest of the Company and within the objectives and purposes of the Company;

c. he/she does not have conflict of interest either directly or indirectly over the management actions that have been performed (by the Board of Directors; and

d. he/she has taken measures to prevent the bankruptcy occurrence (for director) / advised the Board of Directors to prevent the bankruptcy (for commissioner).

In line with the Company Law, the scope for the shareholder of the debtor to incur liability for the debt of an insolvent debtor would be when it can be proven that when the debtor in its insolvent condition create debt:

a. The debtor has not yet acquired legal entity status.

b. The shareholder, in bad faith, uses the debtor solely for its own benefit.

c. The shareholder is involved in unlawful acts committed by the debtor.

d. The shareholder uses the assets of the debtor, causing the debtor to be unable to pay its debts.

e. The debtor has only 1 (one) shareholder for more than 6 (six) months.

15. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

The restructuring or insolvency proceedings should not release the liability of the debtor's directors and other stakeholders for previous actions and decisions, either the liabilities to (i) the third party; and (ii) the debtor or the shareholders of the debtor. The Company Law stipulates that the directors of a company shall be released from their liabilities to the debtor or the shareholders of the debtor based on the resolution of the General Meeting of Shareholders.

The Company Law clearly states that every member of the Board of Directors / Commissioners of the debtor shall be jointly, severally and fully personally liable:

a. for the losses of the debtor if the relevant director / commissioner is proven to be at fault or negligent in the performance of his/her duties in managing the Company with good faith and full responsibility for a director or in supervising and advising the Board of Directors for a commissioner; and

b. if (i) the relevant director / commissioner is proven to be at fault or negligent which leads to

the bankruptcy declaration of the debtor and the (ii) assets of the bankrupt debtor are not sufficient to settle the entire obligations of the debtor, for the unpaid claims of the bankrupt debtor's creditors (This also applies to those holding director / commissioner position within 5 years prior to the bankruptcy declaration).

16. Will a local court recognise concurrent foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Has the UNCITRAL Model Law on Cross Border Insolvency been adopted or is it under consideration in your country?

IBL adopts the principle of territoriality. Foreign court judgment cannot be recognized and enforced in Indonesia, unless there is an applicable convention by the State where the judgment is rendered and Indonesia (which currently is unavailable). As such, foreign court judgments, orders, or reliefs made during the foreign restructuring or insolvency PKPUproceedings cannot be recognized and enforced in Indonesia. Nevertheless, in practice under certain circumstances on a case-by-case basis, the extension of effects of the foreign insolvency proceedings (e.g.: power conferred on foreign receiver based on foreign insolvency proceedings) to assets situated in Indonesia may be recognized by the Indonesian private institutions administering the assets.

Indonesia is not a signatory to any treaty on international insolvency or on the recognition of foreign court judgments. Furthermore, Indonesia has not adopted UNCITRAL Model Law on Cross-Border Insolvency.

17. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction?

IBL provides that the Commercial Court that is authorized to render bankruptcy / PKPU declaration over a debtor that does not reside in the Indonesian territory but runs its professions or business in the Indonesian territory, shall be the Commercial Court having the jurisdiction over the domicile or headquarter of such debtor running its professions or business in the Indonesian territory. Therefore, it is possible for a debtor incorporated elsewhere enter into restructuring or insolvency proceedings in Indonesia, to the extent that such a debtor fulfills

the requirement (i.e.: running its professions or business in the Indonesian territory).

In practice, there have been small number of cases where the Commercial Court granted PKPU and declared bankrupt a debtor incorporated elsewhere which is deemed as running its business in Indonesian territory.

18. How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?

IBL does not recognize the concept of group of companies. Each one members of a group of companies is treated as separate in all respects from its other group of companies members, whether or not in the restructuring or insolvency proceedings. Therefore, there is no scope for cooperation between office holders.

In practice, the receiver / administrator in certain bankruptcy / PKPU proceedings use various different considerations and grounds in deciding to accept or reject claims being submitted by a creditor which constitutes the affiliates of the bankrupt debtor / debtor in PKPU on the basis of certain intercompany loan.

According to the Company Law, the liability of the direct parent company for its subsidiary as a shareholder shall not go beyond its shares' value in the subsidiary. Therefore, the parent company should not be held liable for the subsidiary's actions and transactions. However, in certain circumstances, the parent company may be held liable for the subsidiary’s actions, or for the loss incurred by the subsidiary, if it is established that any of the followings apply:

a. The subsidiary has not yet acquired legal entity status.

b. The parent company, in bad faith, uses the subsidiary solely for its own benefit.

c. The parent company is involved in unlawful acts committed by the subsidiary.

d. The parent company uses the assets of the subsidiary, causing the subsidiary to be unable to pay its debts.

e. The subsidiary has only 1 (one) shareholder for more than 6 (six) months.

19. Is it a debtor or creditor friendly jurisdiction?

From the letter of the law, IBL is a piece of legislation that can be considered as creditor friendly, given the fact that the IBL provides creditors with various strong rights to have control on the restructuring and insolvency process.

Nevertheless, the consistency of the inconsistent practical application of the IBL provisions by various relevant actors (e.g.: judges, receiver, administrator) which among others related to or driven by the following factual conditions, as well as the barriers mentioned below in answer to question 17, may have lead Indonesia be deemed as a debtor friendly jurisdiction:

- Indonesian judges operate in an inquisitorial legal system, have very broad fact finding powers and a high level of discretion in relation to the manner in which those powers are exercised. Consequently, Indonesian judges can sometimes be influenced by factors, issues and evidence which may not be immediately apparent on the face of the court documents in question;
- Under Indonesian's civil law system, the common law doctrine of precedent does not exist and each case must be determined on its own facts and merits although consideration' may be given to previously decided similar cases and academic theories;
- In reality, any unjustifiable legal basis being raised by certain parties may be broadly interpreted by the Indonesian judges to serve certain purpose, leading to an unpredictable outcome.

20. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?

We believe that the sociopolitical factors may give additional influence to the stakeholders in the restructuring or insolvencies in Indonesia, especially in the situations when the restructuring or insolvency proceedings are entered by the following:

- a state-owned enterprise;
- a certain type of debtors, which IBL requires certain state's institution for initiating the restructuring or insolvency proceedings on. For example (i) banks, by Bank Indonesia (the Indonesian central bank), (ii) securities companies by Otoritas Jasa Keuangan (Financial Service Authority, previously known as BAPEPAM-LK or the Indonesian Capital Markets – Financial Institution Supervisory Board), and (iii) insurance and re-insurance companies, pension funds, state-owned companies operating for the public interest, by the Minister of Finance.
- a debtor under certain circumstances. For example: a bankruptcy petition can also be filed by the Public Prosecutor, if it is in the public interest.

Formally, there is no state support available for a distressed business. In practice, there is a case where a distressed business relates to or affects the state-owned enterprises (e.g.: its big supplier is under distressed situation) , it is often that the state-owned enterprises would take certain actions (e.g.: buyout partially/ entirely the distressed business) to ensure that they would not be affected by or could overcome the effect of such distressed business.

21. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

The greatest barriers to efficient and effective restructurings and insolvencies in Indonesia would be the following:

- The lack of transparency of the restructuring and insolvencies process.
- The lack of capacity, skill, experience, qualities, professionalism, ethics of the actors and the professionals involved in the restructuring and insolvencies in Indonesia;
- The lack of single authority to monitor, to evaluate the performance of the restructurings and insolvencies, as well as to intervene when the implementation as a system is considered failed (e.g.: due to misuse / abuse of the system by certain parties in bad faith);
- The lack of rules governing the issue of guarantee, the group of company / affiliate, as well as the cross-border insolvency;
- The system applies one set of rules to all types of debtor, regardless the nature of the debtor (e.g.: individual, corporation).

Yes there are various proposals to reform to counter any of these barriers which are currently under discussions.