Lending and Taking Security in Indonesia: Overview

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Country Q&A | Law stated as at 01-Feb-2025 | Indonesia

A Q&A guide to lending and taking security in Indonesia.

This Q&A provides a high-level overview of forms of security over assets, release of security over assets, special purpose vehicles in secured lending, quasi-security, guarantees, risk areas for lenders, structuring the priority of debts, debt trading and transfer mechanisms, agent and trust concepts, enforcement of security interests, borrower insolvency and cross-border issues on loans.

Forms of Security over Assets

Real Estate

1. What is considered real estate in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected (that is, made valid and enforceable)?

Real Estate

Real estate includes:

- Land.
- Buildings and all fixtures attached to it.

Common Forms of Security

The most common form of security granted over real estate is a mortgage (*Hak Tanggungan*). A mortgage is used to secure land with certain land titles and all fixtures attached to it.

Formalities

Mortgages are established through a two-step procedure:

- The mortgage deed must be signed before the Land Officer (PPAT) that has jurisdiction over the land to be mortgaged.
- The mortgage deed must be registered with the applicable *Land Registration Office* (BPN) using the online land mortgage registration system, as mandated by a regulation from the Minister for Agrarian Affairs and Spatial Planning/ Head of the National Land Agency, which became effective on 8 July 2020.

Since 2021, manual registration is no longer accepted by the BPN in regions that had either previously been using, or had started transitioning to, the online registry system.

Online mortgage services are only available for creditors (as mortgagees) who are registered with the online registry system. Registration is conducted only once, but the creditors' accounts on the system must be renewed annually.

The mortgage deed must be in the Indonesian language and must use the prescribed PPAT form, which must include the following information:

- Identity of the parties.
- Domicile of the parties.
- A clear reference to the secured obligations.
- Amount secured.
- Description of the mortgaged property.

The registration process involves the PPAT registering the signed mortgage deed along with the required documents (current/ latest annual land tax invoice, relevant land certificate and so on) and inputting the relevant data into the *online registry system* within seven days of signing. In practice, registration is carried out as soon as possible to enable registered creditors or their proxies (for example, their security agents) to submit their applications onto the online registry system. In this context, applicants must review and confirm the accuracy of the data uploaded by the PPAT and pay the applicable non-tax state revenue (the amount of which is subject to the mortgage secured amount).

The mortgage is deemed established when an e-mortgage certificate has been issued and the mortgage annotation (which must be downloaded from the online registry system) is printed and affixed to the land certificate(s) secured by the mortgage. The e-mortgage certificate and the affixed mortgage annotation on the land certificate(s) serve as evidence that the mortgage has been formally registered. The e-mortgage certificate will be issued via the system (the PPAT only facilitates the process and is not the issuing authority).

Tangible Movable Property

2. What is considered tangible movable property in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected?

Tangible Movable Property

Tangible movable property includes:

- Machinery and equipment.
- Vehicles, including vessels with gross volume of less than 20 cubic metres.
- Stock and inventory, including raw materials.

Common Forms of Security

The most common form of security granted over tangible movable property is a fiduciary transfer. Under a fiduciary transfer, there is no requirement to remove the asset from the debtor's possession. A fiduciary transfer only secures debts up to the amount specified in the fiduciary deed.

Formalities

A fiduciary transfer is a written agreement by which the transferor transfers to the transferee its rights of ownership in the transferred assets. Under *Law No. 42 of 1999 concerning Fiduciary*, the agreement must be in Bahasa Indonesia and in notarial deed form. The transferor transfers to the transferee its rights of ownership in the assets for the period during which the debt under the agreement remains outstanding. Possession of the tangible assets remains with the transferor who can normally use or dispose of the assets in the ordinary course of business. The fiduciary transfer deed must include the following information:

- Identity of the fiduciary transferor and transferee.
- Date of the underlying agreements secured by the fiduciary transfer.
- Description of the assets.
- Amount secured.
- Value of the assets.

Fiduciary transfers must be registered by the fiduciary transferee at the Fiduciary Registration Office (see the online registration website at *https://fidusia.ahu.go.id/*). There is no specific time period for registration.

If a fiduciary transferor fraudulently executes a fiduciary transfer over the same assets in favour of more than one fiduciary transferee, the first fiduciary transferee registering its security interest has priority regardless of the date of any other transfer. However, all fiduciary transfers remain valid as a contractual matter against the transferor and can be enforced though court proceedings.

Fiduciary transfers come into effect on the date of registration in the Fiduciary Registration Book at the Fiduciary Registration Office. Applicants obtain a Fiduciary Security Certificate when the registration application is accepted. The date of the Fiduciary Security Certificate should be the same as the date of the application.

Applications for registration can be made online, which results in a faster process for issuing certificates as opposed to paper applications (one to three days compared to from one week to one month). The date of the Fiduciary Security Certificate is the date of the application for registration.

Financial Instruments

3. What are the most common types of financial instrument over which security is granted in your jurisdiction? What are the most common forms of security granted over those instruments? How are they created and perfected?

Financial Instruments

Shares are the most common type of financial instrument over which security is granted. The Indonesian law only recognises registered, certificated form of shares.

Common Forms of Security

Pledges are the most common form of security granted over shares.

Formalities

There is no formal legal requirement to have a pledge agreement in writing (pledge of shares agreement). However, it is standard practice to record the pledge agreement in writing (either in notarial deeds or executed privately). Some prefer to sign the pledge agreement in a notarial deed as it holds more evidentiary power in a legal dispute. The pledge agreement must be executed in the Indonesia language. If there is a foreign party to the transaction, the agreement can be executed bilingually, and the foreign language can be set as the prevailing language (the most commonly used foreign language is English).

In addition to the pledge of shares, a power of attorney is usually entered into to vote and sell shares. A pledge of shares does not include voting rights. The power of attorney to vote shares attempts to authorise the pledge to exercise the voting rights over the pledgor on the occurrence of default without assigning them voting rights. However, there is no certainty as to whether Indonesian courts will uphold such power of attorney as it may be in violation of the principle that the voting rights in a pledge must remain with the pledgor or shareholder, notwithstanding the grant of any security interests.

Different formalities apply for the perfection of different types of shares:

- Registered shares: a pledge is effectuated on notification of the pledge of shares to the company in which the shares are held and the recording of the pledge in the company's shareholders' register.
- Shares listed on the *Indonesian Stock Exchange*: a pledge is effectuated on notification of the pledge of shares to the company as well as the Stock Administration Bureau (appointed by the company), which keeps the company shareholders' register. The Stock Administration Bureau subsequently records the pledge in the shareholders' register.
- Dematerialised shares kept in custody of the *Indonesian Central Securities Depository* (*Kustodian Sentral Efek Indonesia*) (KSEI): a pledge is effectuated on notification of the pledge of shares to the KSEI, which will issue a confirmation letter certifying that the shares are blocked and pledged.

Claims and Receivables

4. What are the most common types of claims and receivables over which security is granted in your jurisdiction? What are the most common forms of security granted over claims and receivables? How are they created and perfected?

Claims and Receivables

Debts are the most common type of claims and receivables over which security is granted.

Common Forms of Security Fiduciary assignment is the most common form of security granted over claims and receivables (see *Question 2, Common Forms of Security*).

Formalities

The process of creating fiduciary security for claims and receivables is similar to the creation of fiduciary security for movable tangible assets (see *Question 2, Formalities*).

Fiduciary assignment is validly created only on the registration of the fiduciary deed of assignment (in the Indonesian language) with the Fiduciary Registration Office. However, the debtor can still pay the receivables to the fiduciary assignor to discharge their debts or obligations until the fiduciary assignment has been either:

- Notified to the obligor: a court bailiff must officially serve the notification on the debtor.
- Acknowledged by the obligor: this can be done in writing on the deed of transfer.

In addition to the notification, to ensure smooth performance on the execution of the security on default, an acknowledgement from the obligor (debtor) containing certain undertakings may also be required. Once notified or acknowledged, the obligor can no longer validly settle with the fiduciary assignor and must make payments directly to the fiduciary assignee. For an assignment of trade receivables, notification or acknowledgment of the obligor only takes place when an event of default is anticipated. However, in other cases, such as an assignment of insurance proceeds, the insurance company is usually notified of the transfer when the assignment is created, or soon after.

Cash Deposits

5.What are the most common forms of security over cash deposits? How are they created and perfected?

Common Forms of Security

Pledges over bank accounts are the most common form of security over cash deposits. However, there is uncertainty as to whether security can be created over a fluctuating balance in a bank account. The Fiduciary Registration Office has published the view that a bank account cannot be the subject of an Indonesian security interest, meaning that a bank account cannot be encumbered by using fiduciary security as an instrument. To mitigate this issue, a power of attorney to manage the bank account (that will be exercisable upon default) is usually also created in addition to the pledge.

Formalities

A pledge over bank accounts is the most common of instrument used for encumbering bank accounts in Indonesia (see *Question 3, Formalities*).

In addition to the execution of the pledge agreement, the relevant bank holding the relevant account must be notified of the pledge. Acceptance of the notification is deemed as the transfer of control over the pledged accounts from the pledgor to the pledgee. In addition to the notification, to ensure smooth performance on the execution of the security upon default, an acknowledgement from the bank containing certain undertakings may also be required.

Intellectual Property

6. What are the most common types of intellectual property over which security is granted in your jurisdiction? What are the most common forms of security granted over intellectual property? How are they created and perfected?

Intellectual Property

Trade marks are the most common type of intellectual property rights over which security is granted.

Common Forms of Security

Fiduciary assignment is the most common form of security granted over intellectual property rights (see *Question 2, Common Forms of Security*). In addition to the fiduciary assignment, following the issuance of *Government Regulation No. 24 of 2022 concerning Implementing Regulation of Law No. 24 of 2019 concerning Creative Economy*, intellectual property rights can also be encumbered through either of the following:

- Contracts related to the creative economy, for example, licensing agreements, co-operation agreements or working order.

- Receivables of the creative economy activities, for example, receivables over the royalties that must be paid by the user for commercial usage.

However, these new instruments have yet to be implemented, as the regulation only became effective in July 2023, and the Directorate General of Intellectual Property Rights has yet to issue any implementing guidance.

It is not possible to create security over unregistered intellectual property rights. However, it is possible to provide an undertaking to grant security over such rights when they are registered.

Formalities

See *Question 2, Formalities*.

Problem Assets

7. Are there types of assets over which security cannot be granted or can only be granted with difficulty? Which assets are difficult or problematic when security is granted over them?

Future Assets

See *Question 1, Real Estate*.

The registration authorities require a clear description of assets to register security (see below, *Fungible Assets*). Therefore, for future tangible assets, receivables, insurance proceeds and bank accounts that do not exist at the time of the original fiduciary transfer or assignment, new fiduciary transfers or assignments must be effected each time they come into existence. This is usually done by way of periodical submission to the creditor (fiduciary transferee or assignee) of lists of recently created receivables, insurances and bank accounts. The fiduciary transferor or assignor must sign these lists, and they must contain a reference to the original fiduciary transfer or assignment deed. The updated lists must be registered with the Fiduciary Registration Office.

It is doubtful whether future shares will be automatically pledged by the original pledge of shares agreement. Therefore, it is advisable to execute an additional pledge of shares each time the pledgor acquires or subscribes to new shares.

Fungible Assets

Granting security over fungible assets is not expressly forbidden. However, it may not be feasible in practice as the relevant registration authority requires a clear description of the fiduciary assets. The relevant company or bank where the specific shares or bank accounts are held must be notified of the pledge.

Other Assets

There are no other assets over which security cannot be granted or is difficult to grant.

Release of Security over Assets

8. How are common forms of security released? Are any formalities required?

Security interest under Indonesian law is accessory in nature, that is, it is tied to the claim in respect of which it is vested (normally a loan). It ceases to exist when the underlying claim is paid, expired, or is deemed null and void. Some security interests must be registered at the relevant authority to be created (see *Question 1* and *Question 4*). There are also administrative procedures for deregistration which vary depending on the applicable security type and office (for example, mortgages (from the regional BPN, now carried out electronically following the implementation of e-mortgage online registry system), fiduciary assignments or transfers (from the Fiduciary Registration Office), pledges over listed shares (from the Stock Administration Bureau), and/or for pledges over dematerialised shares (from the SKEI).

Special Purpose Vehicles (SPVs) in Secured Lending

9. Is it common in your jurisdiction to take security over the shares of an SPV set up to hold certain of the borrower's assets, rather than to take direct security over those assets?

It is not uncommon to take security over shares of an SPV set up to hold certain of the debtor's assets. However, it is more common to take direct security over the borrower's assets. For certain sophisticated and high-profile transactions, it is common for the lenders to require both assets to be secured, for example, by requiring the SPV company to provide a corporate guarantee (see *Question 11*) against the obligations of the borrower.

Quasi-Security

10. What types of quasi-security structures are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest?

Sale and Leaseback

Although available, quasi-security structures are not common. Lenders normally prefer to use the available forms of security (see *Question 1*).

Sale and leaseback is usually used in leasing (commercial) transactions. However, it is not commonly used as a security, and some borrowers use sale and leaseback instead of fiduciary security to secure payment of its debts. For example, a borrower sells its asset to a lender and leases back the same asset from the lender. There is typically a condition that when the debts are paid, the lender will re-sell the asset to the borrower.

Factoring

Factoring is recognised. However, it is not commonly used as a security except for some business activities that may benefit from factoring structures. It is common for peer-to-peer lending companies to use factoring to secure the payment of the loan to the creditors.

Hire Purchase

Hire purchase is recognised. However, it is not commonly used as a security.

Retention of Title

The Civil Code grants rights to certain creditors to retain title to goods. However, retention is not commonly used as a security.

Purchase Money

Acquisition financing transactions where the borrower acquires a certain asset (land, shares) using the funds derived from the financing before creating an encumbrance over the asset as a security are common in Indonesia. The borrower and the lender will enter into an ordinary loan agreement with corresponding security documents (mortgage deed for land, or pledge agreement for shares).

Other Structures

Repurchase agreement (Repo) transactions are often entered into. These are sale and purchase contracts for securities with undertakings to purchase or resell at a predetermined time and price. In the event of a dispute, a court may consider a Repo transaction as a secured loan transaction. However, Repo transactions are not commonly used as security.

Guarantees

11. Are guarantees commonly used in your jurisdiction? How are they created?

Personal and corporate guarantees are commonly used. Guarantees are created by written agreement (in notarial form or privately executed form) by the guarantor and the beneficiary in the Indonesian language. If there is a foreign party to the

transaction, the agreement can be executed bilingually, and the foreign language can be set as the prevailing language (the most commonly used foreign language is English).

There is no formal requirement to register guarantees to give them effect.

Risk Areas for Lenders

12. Do any laws affect the validity of a loan, security or guarantee (or the terms on which they are made or agreed)?

Financial Assistance

There is no explicit prohibition on a company providing financial assistance for purchase of shares. Generally, Indonesian law applies the principle of fiduciary duty where the management of a company must administer the company for the benefit of the company, according to the objectives and purposes of the company. In certain cases, financial assistance can be considered as ultra vires (see below, *Corporate Benefit*).

Corporate Benefit

The validity of a legal act performed by an Indonesian company can be contested for want of corporate benefit and compliance with the company's objectives and purposes of its articles of association. It is not clear whether the issuance of a guarantee, or a third-party security, for the benefit of third parties by a company to secure the fulfilment of obligations of a third party can be regarded as furthering the objectives of that company (ultra vires doctrine). Therefore, it is unclear whether such guarantee or third-party security can be voidable or unenforceable.

As a parameter to determine whether any such actions are in furtherance of the objectives of a company, it is important to consider the following:

- The provisions of the articles of association of that company.
- Whether that company obtains certain commercial benefit from the transaction in respect of which the guarantee or third-party security is issued.

Based on the ultra vires doctrine, the validity or enforceability of a guarantee can in principle be challenged by any or all of that company's:

- Shareholders.
- Board of directors.
- Board of commissioners.
- Receivers or trustees in the event of bankruptcy.

To minimise the risks that a guarantee will be challenged based on the ultra vires doctrine, all corporate approvals (from shareholders, board of commissioners and board of directors) must be obtained.

Loans to Directors

There is no general prohibition on an Indonesian company granting a loan to its directors or directors of a related company. However, corporate benefit must be considered (see above, *Corporate Benefit*).

Usury

There is one law dating back to the pre-independence era related to usury (*Woeker Ordonantie of 1938 Staatsblad 38-524*) which, to date, has not been revoked. This law prohibits usury (illegal rate of interest).

However, for legal interest rates, the Indonesian *Civil Code* (*Kitab Undang-Undang Hukum Perdata*) stipulates that there are two types, that is:

- Interest approved on agreement or contract.
- Interest stipulated by law.

The interest approved on agreement or contract can exceed the interest stipulated by law, to the extent permitted or not prohibited by law. Therefore, although *Woeker Ordonantie* has never been revoked, if the parties explicitly stated in their agreement an agreed interest rate, then that agreed rate cannot be deemed as usury.

Others

Other risk areas for lenders include:

- **General provisions on loans, securities and guarantees under the Civil Code.** For example, under Article 1153 of the Civil Code, a pledge over intangible movable assets must be notified to the individual against whom the pledge is exercised.
- **Mandatory use of the Indonesian language (*Bahasa Indonesia*).** A law on the use of Bahasa Indonesia was issued in 2009, which stipulates that memoranda of agreement or agreements involving, among others, Indonesian individuals and private institutions, must also be in Bahasa Indonesia (*Law No. 24 of 2009 concerning the National Flag, Language and Emblem, as well as the National Anthem*) (Language Law).

  Furthermore, a presidential regulation was enacted in 2019, Presidential Regulation No. 63 of 2019 concerning the Use of Indonesian Language (PR 63/2019), which implemented the Language Law. With the enactment of PR 63/2019, a bilingual version of a contract (which contains an Indonesian version) in a cross-border transaction involving an Indonesian party must be used, or separate Indonesian and English versions should be prepared and executed simultaneously. This must also be done even if the contract is governed by foreign law or contains an international arbitration clause.
- **Mandatory use of the Rupiah currency.** In March 2015, Bank Indonesia issued a regulation that states that any transaction carried out in Indonesia, both by residents or non-residents, must be in Rupiah. Parties are also prohibited from refusing to accept the Rupiah as payment if the Rupiah must be used for such a transaction. It also prohibits the

use of dual price denomination using Rupiah and another currency for transactions within the territory of the Republic of Indonesia.

- **Reporting on offshore loans.** Offshore commercial loan borrowers must submit reports on foreign exchange flows and implementation of prudential principles to Bank Indonesia. Previously, they had to also report to the Offshore Commercial Loan Co-ordination Team (*Tim Koordinasi Pinjaman Komersial Luar Negeri*). However, as of July 2020, this reporting obligation has been shifted to the Ministry of Finance as the Offshore Commercial Loan Co-ordination Team has been dissolved.
- **Limitation on ownership of land.** Several types of land titles in Indonesia are restricted for foreign individuals and foreign entities (right of ownership (*hak milik*), right to build (*hak guna bangunan*), and right to cultivate (*hak guna usaha*)). Therefore, lenders who have granted loans to Indonesian borrowers with security in the type of mortgage over plots of land under these land titles will not be able to sell the plots of land to foreign individuals and/or foreign entities during execution of the mortgage (public auction).
- **Industry regulations.** Financial services regulation prohibits the subscription and the purchase of shares of a financial services company using funds sourced from loan / financing from third parties.

13. Can a lender be liable under environmental laws for the actions of a borrower, security provider or guarantor?

Lenders are not held liable for actions of a borrower that have an environmental impact. Only owners of assets can be held responsible for pollution under environmental law. Lenders cannot become owners by holding security over assets.

Structuring the Priority of Debts

14. What methods of subordination are there?

Contractual Subordination

Contractual subordination is possible and common. It also can be achieved by an inter-creditor arrangement between the lenders or an individual subordination deed (commonly used in a shareholders' loan).

Structural Subordination

Structural subordination is not common.

Intercreditor Arrangements

Intercreditor arrangements are common. The parties to an intercreditor agreement usually include lenders, borrowers and obligors. The agreement is used to set out various lien positions, the rights and obligations of each lender, and their impact on other lenders.

Debt Trading and Transfer Mechanisms

15. Is debt traded in your jurisdiction and what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security and guarantees associated with the transferred debt?

The Civil Code allows debt to be traded by way of an assignment instrument (*cessie*). Under *cessie*, the debtor must first be notified and acknowledge the assignment. Without acknowledgment by the debtor, it can continue paying the debt to the original lender (assignor), although the debt has been assigned to the new lender (assignee).

Debt secured by a security interest can also be traded. However, the assignment would normally include an assignment of the security interest; this is due to the accessory (*accessoir*) nature of security interest, that is, it is tied to the debt it secures. The assignee becomes the new holder of the security interest. For security interests that must be registered in a public registry (see *Question 2* and *Question 4*), amendments or notifications must also be made to ensure that the rights over the security interest are preserved.

Agent and Trust Concepts

16. Is the trust or agent concept (such as a facility agent under a syndicated loan) recognised in your jurisdiction?

Agent Concept

The agent concept is recognised.

Agency arrangements created under the law of another country are also recognised, to the extent that they do not violate public order. Facility agents can also enforce rights on behalf of other syndicate lenders.

Trust Concept

The trust concept is recognised, specifically in the banking sector. The Indonesian *Financial Services Authority* (*Otoritas Jasa Keuangan*) (OJK) issued *OJK Regulation No. 27/POJK.03/2015*, as amended by OJK Regulation No. 25/POJK.03/2016 concerning Business Activity of Banks in the Form of Trusts. Under this regulation, banks can act as trustees, and receive and

manage assets for beneficiaries. The bank acting as trustee can represent the party entrusting its assets under the trust agreement to act as:

- Paying agent.
- A conventional investment fund agent or funding agent based on sharia principles.
- A conventional borrowing agent or borrowing agent based on sharia principles.

These activities must be carried out on written instructions by the party entrusting its assets, as stipulated under the trust agreement.

Enforcement of Security Interests

17. What are the circumstances in which a lender can enforce its loan, guarantee or security interest? How are the main types of security interest usually enforced? What requirements must the lender comply with?

Enforcement

Circumstances in which lenders can enforce its loans, guarantees or security interests are typically specified in the agreements; most commonly, events of default due to failure to pay the principal amount or interest when due. There are no mandatory requirements that lenders must comply with to enable them to enforce loans, guarantees or securities.

Methods of Enforcement

Security interests can be enforced through public auctions or private sales.

Public Auction

Public auctions can be conducted without a court judgment or order. However, in practice an Indonesian court judgment or order is required as the State Auction Office would most likely refuse to conduct a public auction without a court judgment or order.

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

Private Sale

Generally, a private sale is only possible if either:

- It is consented to by the debtor after the debt is due and it is in default.

- The debtor agrees to the sale by being a party to a sale and purchase agreement.

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

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

- After the expiry of one month from written notification of the intended sale to interested parties and publication of this notice in at least two daily newspapers circulated in the area where the asset is located.
- Where no third party has voiced an objection against the private sale. The law is unclear as to who these third parties may be, although it is safe to assume that they at least include the borrower's other creditors.

Borrower Insolvency

Rescue, Reorganisation, and Insolvency

18. Are company rescue or reorganisation procedures (other than insolvency proceedings) available in your jurisdiction? How do they affect a lender's rights to enforce its loan, guarantee or security?

Generally, in relation to debt restructuring, the parties can still conduct private negotiations on the outstanding debt, as long as the company has not been declared bankrupt by the court. However, the *Law No. 37 of 2004 on Bankruptcy and Suspension of Payment Obligation* (Bankruptcy Law) provides a formal company rescue process, that is, a suspension of payments. The suspension of payments process applies to all persons and companies that have their domicile or place of business in Indonesia.

Suspension of Payments

The suspension of payments process is initiated by the debtor or their creditors by submitting a petition to the Commercial Court. The petition includes an offer to pay all or part of the debt to the secured and unsecured creditors. The objective is to give the debtor time to reorganise the company in the hope that it will survive as a going concern and ultimately satisfy the creditors' claims. After submitting a petition, the Commercial Court grants the petitioning debtor provisional suspension of payments and appoints both:

- A supervisory judge.
- An administrator, to assist the debtor in managing its estate.

The debtor can continue to manage and dispose of its assets, but only jointly with the administrator. During this suspension, the debtor does not have to make payments to its unsecured creditors. Secured creditors cannot enforce their security without the

court's consent as an automatic stay will be triggered on the issuance of the commercial court decision granting the provisional suspension of payments of a debtor. The debtor can submit a composition plan to all its creditors. If the composition plan is approved by the creditors and it fulfills the quorum requirement as provided in the Bankruptcy Law, the debtor will be released from the suspension of payment status and the composition plan will be used as the new agreement between the debtor and the creditors going forward. Otherwise, the debtor will be declared bankrupt, and bankruptcy procedures will follow.

First Creditors' Meeting

Once the Commercial Court has granted the debtor provisional suspension of payments and appointed an administrator and supervisory judge, the adminstrator is required to announce the decision on suspension of payments as soon as possible in the State Gazette and in at least two daily newspapers as determined by the supervisory judge. The announcement also constitutes an invitation for the creditors of the debtor to attend a judge deliberation meeting. The announcement should include the following:

- Date, location and time of the meeting.
- Name of the supervisory judge.
- Name and address of the administrator.
- Details of a composition plan (if one was submitted in the petition).

The announcement should be made no later than 20 days before the date of the planned meeting. Following the announcement, the administrator and the supervisory judge will hold the first creditor meeting where all the creditors of the debtor are invited. During the meeting, the supervisory judge and the administrator will decide on the deadline for the claim submission, and within the next 14 days, the date and time must be set for the proposed composition plan.

After the first creditors' meeting and the verification process, another creditors' meeting must be called within 45 days of the granting of provisional suspension of payments. At this meeting, the secured and unsecured creditors must either:

- Approve the composition plan, if a plan was submitted to the Commercial Court.
- Agree to convert the provisional suspension of payments into a permanent suspension of payments for a period of up to 270 days as of the granting of provisional suspension of payments.

If the creditors do not agree the debtor will be declared bankrupt.

Any creditors' meeting to consider the plan must be held before the permanent suspension of payments expires.

Decisions require affirmative votes of both:

- More than 50% in number representing at least 66.67% in value of the unsecured creditors present or represented at the meeting.
- More than 50% in number representing at least 66.67% in value of the secured creditors present or represented at the meeting.

Composition Plan Ratification

If the creditors approve the plan, the supervisory judge must submit a report in writing to the Commercial Court. The court considers the report and hears the administrator and dissenting creditors. The court must refuse to ratify the plan if:

- The value of the debtor's assets considerably exceeds the amount agreed in the plan.
- It is insufficiently certain that the plan will succeed.
- The plan was concluded as a result of fraudulent transactions or undue preferences of one or more creditors, or other unfair means, regardless of whether the debtor or any other party co-operated with this.
- The cost and expenses for the administrator or other professionals engaged have not been paid or the payments have not been adequately assured.

Once ratified, the composition plan becomes final and binding on all secured and unsecured creditors, except for the dissenting secured creditors. Dissenting secured creditors are entitled to compensation from the debtor at the lowest of either the:

- Value of their security. They can choose between the security value provided in the security documents or the security value designated by an appraiser appointed by the supervisory judge.
- Amount of their outstanding secured claims.

Post-Ratification

Following ratification, the suspension of payments is completed and the administrator or receiver (as applicable) will be discharged. The business and assets of the debtor will be returned to the debtor's control, subject to any specific provisions contained in the plan.

19. How does the start of insolvency procedures affect a lender's rights to enforce its loan, guarantee or security?

Insolvency in the Indonesian context means a state of being unable to pay, which may be triggered due to certain circumstances in a suspension of payments process (see *Question 18*). The insolvency proceeding is usually referred to as a bankruptcy proceeding. Generally, mortgages, pledges and fiduciary transfers or assignments are in rem rights that are absolute and exclusive. They create preferential rights to the holder, even in bankruptcy. Assets under mortgages, pledges and fiduciary transfers or assignments are not regarded as part of the bankruptcy assets.

The bankruptcy declaration triggers an automatic stay of the bankruptcy estate on the issuance of the Commercial Court decision granting the provisional suspension of payments (see *Question 18*) or declaring the bankruptcy of the debtor.

In the provisional suspension of payments procedure, the stay ranges between 45 days up to 270 days, in line with the suspension of payments period granted (see *Question 18*).

Under the bankruptcy proceedings, the automatic stay is a maximum of 90 days, which may be less if the proceeding is terminated earlier or if the state of insolvency is commenced. Once the state of insolvency is declared, the secured creditors

must start exercising their privileged rights over the collateral within two months of the insolvency. Otherwise, the appointed receiver must request the delivery of the collateral to be sold by the receiver. If the receiver enforces the collateral, mandatory preferred claims (which will also apply if the secured creditors enforce the collateral by themselves) and bankruptcy costs (including the receiver's fee) must first be deducted from the proceeds that will be distributed to the secured creditors.

20. What transactions involving loans, guarantees, or security interests can be made void if the borrower, guarantor or security provider becomes insolvent?

Under the Bankruptcy Law, receivers can apply to the court to nullify a preferential transfer transaction (such as a transaction involving a loan, guarantee or security interest) on the basis that this transaction is detrimental to the creditors. The receiver must prove the following:

- The debtor entered into the transaction before it was declared bankrupt.
- The debtor was not required by an existing contractual obligation or by law to perform the transaction.
- The transaction prejudiced the creditors' interests.
- The debtor and the third party to the transaction had or should have had knowledge that the preferential transaction would prejudice the creditors' interests. The debtor and the third party are deemed to know this transaction was detrimental, unless they can prove that:
    - it was entered into within one year before the company's bankruptcy;
    - the transaction was not mandatory; and
    - it was a transaction in which the consideration that the debtor received was substantially less than the estimated value of the consideration given, it was a payment or granting of security for debts that are not yet due or it was a transaction entered into by the debtor with a relative or related party. A relative or related party has a wide meaning and applies to debtors who are individuals and debtors that are legal entities.

The Bankruptcy Law does not set a time limit within which an application must be brought.

Additionally, the Civil Code also provides for the right for any creditor to request for the nullification of a preferential transfer. This right is only available within the five-year period starting from the date when the creditor knew or should have known the preferential transfer prejudiced the creditor's interests.

Despite the above, the Civil Code and the Bankruptcy Law provide a valid defence for a good faith purchaser in the event a preferential transfer claim on an asset is accepted, and then nullified. The defence protects the asset from seizure in relation to a preferential transfer claim made by a receiver or creditor.

21. In what order are creditors paid on the borrower's insolvency?

The general rule on distributing the proceeds of a bankruptcy estate to unsecured creditors is one of equality, subject to the statutory priority rights of certain categories of creditors. Shareholders rank behind all creditors in the distribution of the proceeds of the bankrupt estate. The ranking order of creditors under the bankruptcy is as follows:

- Specific expenses stipulated by *Law No. 6 of 1983 on General Provisions and Taxation Procedures*, as amended and partially revoked several times, lastly by Law No. 6 of 2023 on Ratification of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation as a Law (Tax Law):
    - legal expenses arising solely from a court order to auction movable and or immovable goods;
    - expenses incurred for securing the goods; and
    - legal expenses, arising solely from the auction and settlement of inheritance.

- Preferred creditors with ranks above the secured creditors as provided by the Civil Code, for example:
    - tax claims (comprising principal tax, administrative sanctions in the form of interest, fines, increases and tax collection costs, as stipulated in the Tax Law);
    - court charges that specifically result from the disposal of a movable or immovable asset (these must be paid from the proceeds of the sale of the assets before all other priority debts, even pledges or mortgages); and
    - legal charges, exclusively caused by sale and preservation of the estate (these have priority over pledges and mortgages).

- Post-bankruptcy creditors, that is, claims against the bankrupt estate, for example:
    - receivers' fees;
    - costs of liquidating the bankruptcy estate (for example, fees of appraisers and accountants);
    - new financing;
    - lease costs for the bankrupt's house or offices as of the date of the declaration of bankruptcy; and
    - wages of the bankrupt's employees as of the date of the declaration of bankruptcy.

- Secured creditors holding mortgages, pledges, fiduciary transfers or assignments, or hypothecs (a type of security interest granted over vessels with gross volume of more than 20 cubic metres) (see *Question 1*).
- Specific statutorily preferred creditors whose preference relates only to specific assets.
- General statutorily preferred creditors (for example, revenue authorities).
- Other unsecured creditors who will receive their pro rata share of any of the remaining proceeds.

The cost of the bankruptcy is shared pro rata among the statutorily preferred creditors and the unsecured creditors.

Cross-Border Issues on Loans

22. Are there restrictions on the making of loans by foreign lenders or granting security (over all forms of property) or guarantees to foreign lenders, or taking guarantees from foreign subsidiaries of the borrower?

There are no restrictions on the making of loans by foreign lenders. However, certain requirements such as reporting may apply (see *Question 12, Others*). There are no restrictions on granting security or guarantees to foreign lenders. There are no restrictions on taking guarantees from foreign subsidiaries of the borrower either.

However, for upstream or sister guarantees where subsidiaries provide guarantees to their parent company, this could raise an argument that such guarantee does not create a commercial benefit to such subsidiaries. Unlike a downstream guarantee where a parent company giving a guarantee to its subsidiaries is in relation to its interest in the subsidiary, a subsidiary or indirect subsidiary (or an unrelated third party) does not actually have any recognised interest in providing such a guarantee (see *Question 12, Corporate Benefit*).

23. What regulatory requirements does a UK lender have to comply with to purchase a loan made to a borrower in your jurisdiction?

Not applicable.

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Recent transactions/activities

- Leading ABNR team in advising PT Indo Raya Tenaga, the (around USD3.6 billion) project company Java 9 and 10 power plant (2020).
- Leading ABNR team in advising a prominent investor in the approximately USD18 billion mega-merger of Indonesian top tech companies (2021).
- Leading ABNR team in assisting a divestment majority stakes in around USD100 million fintech to a top leading Indonesian technology company (2020).
- Leading ABNR team in assisting major international fintech driven investment firm in providing a facility to a leading peers to peers platform (2020).
- Leading ABNR team in assisting a world leading manufacturer in the rack-and-pinion rail vehicle industry in its co-operation (initial investment around USD100 million) with the Indonesian state-owned integrated rolling stock manufacturer (2019).
- Leading ABNR team in assisting a partial divestment in a market leading printing company to a major Japanese printing company and the relevant co-operation (2019).
- Leading ABNR team in assisting PT Layar Persada in sale of shares in PT Graha Layar Prima Tbk (an Indonesia-based company primarily engaged in the operation and management of a movie theatre chain and food and beverages) to Coree Capital Limited amounting to approximately USD70 million (2018).
- Leading ABNR team in assisting a prominent conglomerate investor in the USD50 million funds raised by PT Sicepat Ekspres Indonesia, an e-commerce-focussed logistics company (2018).
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Publications

- *Omnibus Bill: Is It Time to Investment In Indonesia?: Asia Business Law Journal (2020).*
- *Practical law: Public Mergers and Acquisitions in Indonesia: Thomson Reuters (2020).*
- *Lending Market Review 2019: International Law Office (Globe Business Media Group) (2020).*
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- *The 101 of M&A Transactions in Indonesia: Financier Worldwide Magazine (2022).*
- *Taxation era for Indonesia's digital financial world: Asia Business Law Journal (2022).*

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- Regularly advising high-profile multi-national and local companies on privacy and data protection, internet-based products and services (digital platforms, social media, online games, cloud computing, e-commerce, over-the top services), cybersecurity, and content moderation.
- Regularly representing clients in post-merger notifications to the Indonesian Competition Commission (KPPU) and advising commercial arrangements from antitrust perspective.
- Indonesian legal counsel for an acquisition by a Dutch-based life science and chemicals multinational company of an Indonesian-based pharmaceutical company (2023-2024).

Languages. Indonesian, English

Publications

- *Foreign Investment Law Guide 2018-2019, LexisNexis.*
- *Lending and Taking Security in Indonesia: Overview, Thomson Reuters (2021).*
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