



MAYER | BROWN

Government Responses to COVID – 19 and Insolvency Regime Comparisons *Selected Asian Jurisdictions*

(updated on 22 April, 2020)

In response to the economic implications of the COVID-19 pandemic, governments, central banks and other bodies have implemented and/or raised measures intended to help market participants. In this document, we provide an overview of some of the initial action taken in certain jurisdictions in Asia, together with outline characteristics across various regional insolvency regimes. So far, such directions as have been made in Asia primarily relate to small and medium sized enterprises, with larger lending positions under consideration. The situation continues to develop apace and updated information regarding additional or amended measures should be expected – please check back to this document periodically. **The latest updates are added in red text.** If printing this document, please note that it contains some hyperlinks, for ease of review of the relevant web pages from time to time.

The focus in this document is measures affecting enforceability of loans as well as legislation overriding current obligations, rather than more general monetary or fiscal policy/stimulus.

Other legal obligations

The practical implications of how a company may access a state-backed lending or other support programme will need to be assessed on a case-by-case basis. Each company will need to consider carefully how a particular measure sits with its existing financing arrangements, noting in particular that waivers and/or consents to access the funding may be required. With regard to additional funding, consideration will need to be had as to where in the corporate structure funds should be taken in and how disbursed.

Individual jurisdictional approach

Different governments in different jurisdictions are so far taking their own approaches. Corporate groups will want to consider what is available and how it impacts them in the different geographies in which members of their group operate.

Insolvency law amendments

Some jurisdictions have taken steps to adapt their insolvency laws by, for example, suspending the obligation to file for insolvency until later this year and to soften insolvent trading prohibitions. Lenders and borrowers alike will need to keep abreast of such changes to assess the impact on their arrangements, including where relaxation of specific rules may ultimately mean increased risk to repayment.

Please feel free to contact any of us in connection with this information or restructuring considerations more generally.



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COVID-19 PANDEMIC – CENTRAL BANK AND GOVERNMENT RESPONSES

(Hong Kong SAR, China, India, Indonesia, Japan, Australia, Korea, Malaysia, Singapore, Philippines, Thailand and Vietnam)

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Hong Kong SAR	<p>In response to calls from the Hong Kong Monetary Authority (HKMA) to support SMEs during the outbreak, banks continue to proactively offer to delay repayments or extend loan tenors, and to reduce fees. Some banks also provide unsecured loan products for SMEs to help improve their cash flow and have made special arrangements to expedite loan approvals.</p> <p>Banks have also introduced relief measures for the import and export sector, such as extending the repayment period of trade financing facilities to align with the prolonged trade cycle as a result of the outbreak and allowing customers to convert trade financing lines into temporary overdraft facilities so that SMEs can manage their cash flow more flexibly.</p> <p>On 26 February 2020, the Financial Secretary in the 2020/2021 Budget introduced a concessionary low-interest loan with 100% government guarantee. Under the scheme, the maximum loan will be HK\$2 million with a repayment period up to 3 years. The government has indicated that it will provide guarantees of up to HK\$20 billion in total under the concessionary loan scheme.</p> <p>The HKMA has, together with HKMC Insurance Limited (HKMCI), announced new policy initiatives to support SMEs. One of the HKMA's key measures is to increase liquidity in the banking sector so that banks will have ample liquidity to support local economic activities. The HKMA will also reduce the current level of regulatory reserves requirements (that is, that portion of a bank's retained earnings earmarked for the purpose of maintaining adequate provision for possible credit losses) by half in order to release a total of HK\$200 billion of lending capacity. The third policy is for banks to offer extensions of loan tenor or principal repayment holidays to qualified SMEs without requiring them to make an application (see summary below regarding 6 Month Loan Repayment Holiday).</p> <p>The HKMA also noted that banks may allow SME customers in the import-export and manufacturing sectors to further extend the repayment period of trade financing facilities should they face cash flow pressure due to shipment delays. In order to allow bank customers to manage their cash flow more flexibly, customers may apply to banks to convert trade financing lines into temporary overdraft facilities.</p> <p>The HKMA has lowered the Countercyclical Capital Buffer ratio twice by a total of 1.5 percentage point since October last year, releasing around HK\$700-800 billion of lending capacity, enabling banks to provide more credit.</p> <p>The HKMA issued a guideline to banks in March this year, deferring the implementation of the various requirements under the Basel III framework so that banks can focus on addressing the challenges brought about by the coronavirus outbreak.</p> <p>In an open letter to all Authorized Institutions (AIs) dated 3 April 2020, the HKMA noted among other things:</p> <ul style="list-style-type: none"> • In the light of the prevailing uncertainties brought about by the COVID-19 outbreak, a reiteration that the HKMA's stance that it is in line with the policy objective of the enhanced regulatory liquidity framework if AIs utilise their liquidity buffers (when circumstances so warrant under the Banking (Liquidity) Rules (BLR)) to meet their liquidity demand and support business activities. The HKMA encourages AIs acting along this principle and will accept an AI operating temporarily with a lower level of liquidity ratio as a result. • Specifically, rule 6 of the BLR provides that a Category 1 institution may monetise its High-Quality Liquid Assets (HQLA) under certain circumstances even though this may cause the institution to maintain a liquidity coverage ratio (LCR) less than that required under rule 4 of the BLR. For Category 2 institutions, the requirement of maintaining the liquidity maintenance ratio 	<p>On 28 January 2020, the Judiciary announced the adjournment of all hearings of the courts/tribunals for an expected period ("General Adjournment Period" or "GAP"), but urgent and essential court hearings and business would continue to be dealt with.</p> <p>In the latest court announcement on 22 April 2020, the Judiciary indicated that the GAP will end on 3 May 2020, subject to further revisions by the Judiciary. From 4 May 2020, all court proceedings will generally resume as safely as circumstances permit. In the same way, court and tribunal registries will also start to re-open by stages from 6 May 2020, the first stage including the registries of the Court of Final Appeal and the High Court.</p> <p>From 4 May 2020, all hearings, both civil and criminal proceedings, including trials, will generally resume unless they are adjourned pursuant to specific directions by the court, but with reduced capacity. However, jury trials will only start after May. To ensure an orderly resumption of court proceedings, an appropriate buffer period will be provided before hearings, particularly trials, are resumed. Parties concerned, be they legally represented or litigants in person, will be given clear notification and directions on the mode of hearings with sufficient lead time for preparation. More details will be provided to court users in the stakeholders' notifications to be issued in due course.</p> <p>For civil proceedings, the court will continue to adopt a flexible and multi-pronged approach. Judges and Judicial Officers (JJOs) will continue to proactively manage their cases and directions will be given to the parties as necessary. Where appropriate, JJOs will consider disposing the cases on paper as far as possible. JJOs may also invite parties to explore the use of video-conferencing facilities (VCF) or conduct hearings by telephone where appropriate.</p> <p>On 2 April 2020, the High Court issued directions on conducting remote hearings by using existing VCF in court rooms. A remote hearing can be conducted in a court room with VCF availability, in which the lawyers and parties would take part in the hearing at their respective conference rooms.</p> <p>In the first instance court level, for example, all interlocutory applications or appeals would be considered for hearings remotely, but not trial proceedings.</p>

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	<p>(LMR) above 25% on a monthly average basis entails that there may be temporary variations in the ratio so long as the monthly average ratio remains above the minimum requirement.</p> <ul style="list-style-type: none"> As for the utilisation of liquidity buffers under the LCR and LMR regimes, AIs should ensure that the flexibility embedded in the regulatory liquidity framework is integrated into their relevant internal processes, and that they can efficiently utilise the liquidity buffers when there is a need to do so. The HKMA will reach out to individual AIs to understand their internal processes in this regard. <p><u>6 Month Loan Repayment Holiday for SMEs</u></p> <p>On 17 April 2020, the HKMA together with the Banking Sector SME Lending Coordination Mechanism announced the commencement of a Pre-approved Principal Payment Holiday Scheme (Scheme) for eligible corporate customers. Under the Scheme, all loan principal payments of eligible customers falling due within a 6-month period between 1 May 2020 and 31 October 2020 will be pre-approved for deferment. Principal payments of loans (including revolving facilities) will generally be deferred by 6 months, whereas trade facilities, given their short-term nature, will be deferred by 3 months.</p> <p>Any corporate customer that has an annual sales turnover of HK\$800 million or less and has no outstanding loan payments overdue for more than 30 days is eligible for the Scheme. Corporate customers would not need to apply for the Scheme, as the banks would contact eligible customers on the pre-approval arrangement, and corporate customers would only need to reply to the bank's notice to confirm the arrangements of the principal payment holiday. However, the Scheme is not applicable to syndicated loans or loans used for financing purchases of shares or other financial assets.</p> <p>On 18 April 2020, the HKMCI announced that, with the support of the Finance Committee of the Legislative Council, the total guarantee commitment of the Special 100% Loan Guarantee (Special Loan Guarantee) is increased from HK\$20 billion to HK\$50 billion. The maximum loan amount per enterprise is increased from HK\$2 million to HK\$ 4 million. The principal moratorium has been extended from the first 6 months to first 12 months of the repayment period. SMEs can apply for the Special Loan Guarantee from 20 April 2020, and the application period is 1 year.</p>	

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China	<p>The PRC government has adopted various measures to address the financial stress facing corporations.</p> <p>A lender's ability to enforce its loans and security will be affected by the Notice regarding the temporary delay in the repayment of principal and interest by Small-and-Medium-sized Enterprises (SMEs) (关于对中小微企业贷款实施临时性延期还本付息的通知)</p> <ul style="list-style-type: none"> On 1 March 2020, The People's Bank of China (PBOC), China Banking and Insurance Regulatory Commission (CBIRC), National Development and Reform Commission (NDRC), Ministry of Finance (MOF), Ministry of Industry and Information Technology (MIIT) jointly issued this Notice to direct banks to provide grace periods to SMEs in loan repayments. Qualified small- and medium-sized businesses nationwide with principal or interest due between 25 January 2020 and 30 June 2020 can apply to delay repaying their debt. In Hubei province, the epicentre of the outbreak, the waiver applies to all companies, including large firms. The Notice also encourages local PRC banks to apply for funds from PBOC to provide loans at favourable interest rate to private enterprises and SMEs. For industries that are heavily affected by the outbreak, such as logistics, catering, retail/ wholesale businesses, the notice encourages banks to provide financial aid in suitable terms. The Notice directs banks not to downgrade loans with missed payments and not to downgrade the credit-rating of these borrowers. <p>In addition, the PBOC, MOF, CBIRC, China Securities Regulatory Commission, and the State Administration of Foreign Exchange issued the Notice on Further Strengthening Financial Support for the Prevention and Control of the Epidemic of Novel Coronavirus Pneumonia (关于进一步强化金融支持防控新型冠状病毒感染肺炎疫情的通知) on 31 January 2020, which required that financial institutions should not limit, rescind, or reduce loans for micro-and-small-sized enterprises without due consideration. For enterprises severely affected by the outbreak, their loans should be extended or renewed.</p> <p>While the PRC government has not introduced any legislation on insolvent trading, it has introduced various policies to address the immediate liquidity needs of corporates. These include:</p> <p>Policy Guidelines – to Support SMEs in Responding to COVID-19 (支持中小企业应对新冠肺炎疫情政策指引)</p> <ul style="list-style-type: none"> On 19 March 2020, the MIIT issued these Guidelines to direct banks to provide additional re-loans, rediscount or special credit loan to SMEs. This Notice also provides for local reduction in tax, utility charges, property rents and social insurance premiums is consistently promoted. <p>February 2020 Bonds issued by local government and the outstanding debts (2020年2月地方政府债券发行和债务余额情况)</p> <ul style="list-style-type: none"> Chinese local governments issued RMB438 billion of bonds in February 2020, according to this update from MOF on 3 March 2020. The notes have an average tenor of 17.5 years and will pay an interest rate of 3.34% on average. Outstanding local government debt by the end of last month stood at RMB22.53 trillion, including over RMB22.34 trillion in bonds, the MOF said. The remainder are loans and other borrowings taken out before 2015, when local governments were given the greenlight to directly sell bonds. Before that, they raised money through local government financing vehicles. <p>The PBOC has indicated that it has freed up RMB 2.25 trillion funds since February 2020 via cutting the reserve requirements for banks, encouraging the banks to lend to companies affected by the COVID-19 outbreak. Another RMB 500 billion through refinance and rediscount was apparently offered to banks to finance businesses.</p> <p>The PBOC further announced on 3 April 2020 that it would reduce required reserve ratio (RRR) and interest rate paid on excess reserve:-</p>	<p>The courts are closed in China. Based on the Notice Regarding Strengthening and Regulating Online Litigation During the Outbreak of COVID-19 (关于新冠肺炎疫情防控期间加强和规范在线诉讼工作的通知) issued by the Supreme People's Court on 18 February 2020, the courts are encouraged to conduct the hearings online but it is not mandatory. If the parties disagree to online trial, the cases will be adjourned.</p> <p>All the documents, including the filing of writ and the exchange of evidences can be filed to the courts through an online platform.</p> <p>The PRC courts have not yet announced a date of resumption of physical hearings.</p>

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	<ul style="list-style-type: none"> • PBOC would cut the targeted RRR at approximately 4000 small to mid-sized banks in the country by 0.5 percentage points on 15 April 2020 and again on 15 May 2020, amounting to a full 1 percentage point cut. After the cut, the RRR at the small to mid-sized banks is reduced to 6%. It is estimated that the cut would release around RMB 400 billion in liquidity. • PBOC would also reduce the interest rate on the financial institutions' excess reserves at PBOC to 0.35% from 0.72%, from 7 April 2020. <p>In view of the heavy blow to the aviation industry caused by the outbreak, the MOF and the Civil Aviation Bureau issued their Notice About Providing Financial Support To Airlines In View Of The Outbreak of COVID-19 (关于民航运输企业新冠肺炎疫情防控期间资金支持政策的通知) to provide special financial subsidies to the airlines:</p> <ul style="list-style-type: none"> • The PRC government will subsidise domestic and foreign airlines for their China inbound and outbound international flights based on flight mileage and passenger capacity. The subsidies will be available between 23 January 2020 and 30 June 2020. • The measure is used to encourage airlines not to cancel their international flights and resume those international flights already cancelled. • Air China, China Eastern Airlines and China Southern Airlines will directly receive the subsidy from the MOF. Other domestic regional airlines will receive their funding from local MOF branches. Foreign airlines will receive their subsidies from the Civil Aviation Administration of China. • Financial support for domestic and foreign airlines operating international passenger flights between and from domestic destinations and overseas destinations includes certain rewards per seat and per kilometre. 	

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India	<p>On 24 March 2020, India's Finance Minister announced an intention to raise the threshold of default under section 4 of the Insolvency and Bankruptcy Code 2016 (IBC) from the existing threshold of US\$1,314 to US\$131,477. The policy change aims to prevent the triggering of insolvency proceedings against SMEs. If the current situation continues beyond 30 April 2020, the ministry stated that it could consider suspending section 7, 9 and 10 of the IBC for 6 months to avert companies from being forced into insolvency proceedings due to defaults during the outbreak.</p> <p>Section 7 of the IBC entitles a financial creditor either by itself or jointly with other financial creditors to file an application to initiate a corporate insolvency resolution process against a corporate debtor. Section 9 of the IBC gives power to operational creditors to initiate a corporate insolvency resolution process after default. Before initiating the proceedings, the creditor has to send a demand notice demanding payment. The suspension of the provisions of the IBC would mean a temporary halt to insolvency applications.</p> <p>On 27 March 2020, the Reserve Bank of India (RBI) asked all banks and other lending institutions, including non-banking finance companies, to allow a 3 month moratorium on payment of instalments of all term loans outstanding as at 1 March 2020. It appears the moratorium on term loans and deferment of interest payment would not result in asset classification downgrade. Further, the RBI intends to allow all lending institutions and banks to grant a 3 month deferment on payment of interest on all working capital loans in the form of cash credit or overdraft. (See RBI Additional Relief Measures below.)</p> <p>Interest payments on working capital loans are also to be deferred by three months, with the accumulated interest for the period to be paid after the expiry of the deferment period.</p> <p>The RBI also deferred the implementation of the net stable funding ratio and countercyclical capital buffers.</p> <p>On 7 April 2020, in addition to the 3 months moratorium for loan payments, the RBI announced an extension to the time period that State Governments and Union Territories can be in overdraft continuously to 21 working days from the current stipulation of 14 working days.</p> <p>RBI Additional Relief Measures</p> <p>On 17 April 2020, the RBI announced a series of new measures to ease flow of credit into the economy, among other things, the RBI has decided that:</p> <ul style="list-style-type: none"> • The previous 3 month moratorium/deferment announced on 27 March 2020 for overdue bank account payments can be excluded when classifying non-performing assets (i.e., there would an asset classification standstill for all such accounts from 1 March 2020 to 31 May 2020). However, with the objective of ensuring that banks maintain sufficient buffers and remain adequately provisioned to meet future challenges, they will have to maintain higher provision of 10 per cent on all such accounts under the standstill, spread over two quarters, i.e., March, 2020 and June, 2020. • Reduce the liquidity coverage ratio for scheduled commercial banks from 100% to 80% in the proportion to liquid assets they are required to set aside to cover short-term obligations. The requirement is expected to be gradually restored in two phases in October 2020 and April 2021. • Scheduled commercial banks and cooperative banks must not make any further dividend payouts from profits pertaining to the financial year ended March 31, 2020 until further instructions. • Non-banking financial companies' loans to delayed commercial real estate projects can be extended by an additional year over and above the one-year extension permitted in normal course, without being treated as a restructuring (similar to the existing guidelines for banks). 	<p>On 13 March 2020, the Supreme Court of India (Supreme Court) announced that it would only hear urgent cases and only limited personnel and concerned lawyers would be able to access the court. The Supreme Court noted that it would shortly introduce the facility of court proceedings over video conferencing, and lawyers would argue their cases in separate rooms within the court premises through video conference.</p> <p>On 25 March 2020, the Supreme Court announced that the Court will continue to function and to hear matters involving extreme urgency. Hearings will continue to be heard through video-conferencing. Due to the prevailing situation, parties are encouraged not to undertake travel or attend the Court's premises in person for hearings. On the same day, the High Court of Delhi, New Delhi, issued an office order that court hearings will remain suspended until 15 April 2020.</p> <p>The Supreme Court indicated that, due to public health reasons, it would only hear matters involving extreme urgency. On 15 April 2020, the Supreme Court issued a new circular in relation to e-filing and instructions for joining video conferencing. The new circular supersedes the previous circulars dated 23 March 2020 and 26 March 2020 reiterating and elaborating on Standard Operating Procedure (SOP) for e-filing and court hearings through video conferencing. Advocates or litigants are required to file the petition of an urgent application through e-filing, and they are allowed to submit a signed and verified application containing a summary of the urgent matter (no longer than a page). Advocates or litigants would need to specify whether they would attend the video-conferencing through their own electronic devices or would prefer to appear at the video conference facility in the Supreme Court premises.</p>

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Indonesia	<p>Banks are being encouraged by the chairman of The Financial Services Authority (OJK) to defer debt collection / enforcement activities. The Financial Services Authority (OJK), which is the industry regulator, has revised the criteria for assessing bad (non-performing) loans in an effort to give banks some flexibility in how they identify and therefore provision for bad (non-performing) loans. The request was made in a speech by the chairman of the OJK. This request is currently not backed by any formal regulation so the exact legal impact is difficult to quantify. It will however most likely be of some guidance to local banks in their dealings with small to medium sized enterprises.</p> <p>The Indonesian government considers the COVID-19 pandemic a non-natural disaster. The National Disaster Mitigation Agency has invoked Presidential Regulation No. 17/2018 and declared the outbreak to be a particular state of disaster emergency. The classification as an emergency should expedite administrative responses. In addition, a national task force has been created by presidential decree.</p> <p>The OJK has passed OJK Regulation No. 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy on the Effect of the Coronavirus Disease 2019 Outbreak (the New Regulation). The New Regulation is effective until 31 March 2021.</p> <p>The New Regulation relaxes the credit scoring and capital provisioning requirements for banks in an effort to (1) lower their capital costs and (2) give them flexibility to restructure loan positions with borrowers affected by the COVID-19 crisis (Impaired Borrowers). The new regulations also make it easier for the banks to provide new money to refinance some of those Impaired Borrowers. Banks are not mandated to provide this relief, the decision on whether to provide such relief, what relief is provided and the contractual terms appear to be left up to the banks.</p> <p>The New Regulation suspends previous requirements for determining the asset quality of loans to Impaired Borrowers, with the result that the asset quality of such loans can now be determined on the narrow grounds of whether the Borrower has been punctual in making payments. It is unclear whether this suspension applies to all Impaired Borrowers, although the prevailing view seems to be that it applies to Impaired Borrowers with debt of up to IDR10 billion.</p> <p>The New Regulation gives banks greater ability to restructure debt to Impaired Creditors by suspending certain prudential regulatory requirements that would otherwise have applied. The upshot of this is that it is now easier (from a regulatory perspective) to restructure such loans into "performing loans" which carry a higher credit rating. A bank is therefore able to engage with Impaired Borrowers in ways that enable it to actively restructure its portfolio of loans. There does not appear to a debt ceiling for this measure.</p> <p>Finally, to the extent that a proposed restructuring includes the provision of new money, the prudential requirements that would typically apply have been relaxed to allow banks to provide new financing to Impaired Borrowers that are SMEs. The prudential measures appear to continue to apply to Impaired Borrowers with debt ceilings above IDR 10 billion.</p> <p>It is important to note that whilst an Impaired Borrower could be any borrower whose business (and therefore its ability to service debt) has been affected by the impact of COVID-19, the New Regulation leaves the actual decisions in respect of each Impaired Creditor up to the banks. The New Regulation does however require Banks to prepare internal guidelines for implementing the New Regulation and identifying Impaired Borrowers. At a minimum, this creates an opportunity for Impaired Borrowers to open negotiations with their lenders to obtain some type of debt relief or restructuring.</p>	<p>Courts are generally open and continuing to function as normal.</p>

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Japan	<p>The Financial Services Agency has issued a "Request pertaining to Financing based on the 'Urgent Economic Countermeasures for the COVID19 Outbreak'" which requests that financial institutions (among other things):</p> <ul style="list-style-type: none"> • Refrain from treating breaches of loan covenants by borrowers in a mechanical or formalistic fashion, but instead: <ol style="list-style-type: none"> 1) Get a detailed grasp of the actual business situation facing their borrowers and refrain from demanding immediate payment of loans; 2) Deal swiftly and seriously with requests from borrowers for postponement or alterations to loan covenants; and 3) As for syndicated loans, cooperate with relevant financial institutions to respond in a coordinated fashion. • Strive to strengthen partnership with the Japan Finance Corporation given the sudden growth in requests for financing-related advice to the Japan Finance Corporation ; and <p>Refrain from registering with credit bureaux clients affected by COVID-19 who have asked and been granted deferrals of debt payments as being in arrears.</p> <p>In mid-March, revisions to the "Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response" (Act) were enacted to empower the prime minister to declare a state of emergency for the outbreak of the new coronavirus. A state of emergency was declared on 7 April 2020 and is set to apply initially until 6 May to Tokyo and its neighbouring prefectures (Saitama, Chiba, and Kanagawa), as well as the prefectures of Osaka, Hyogo, and Fukuoka.</p> <p>Article 58 of the Act appears to contain language that authorizes the government to pass laws to extend payment deadlines of, and prolong rights over 'monetary obligations' in the event that there is 'a sudden and widespread upsurge' in coronavirus cases 'of a magnitude that leads to a significant economic downturn...threatening the economic order and public welfare'. However, given the open-endedness of the language, the practical implications of this provision may be open to interpretation. We note that the recently passed legislation is a time-limited amendment to a 2012 law created to deal with an influenza outbreak, and stipulates that references to 'novel influenza' should be read as 'novel coronavirus' where appropriate.</p>	<p>On 13 March 2020, Japan Judiciary's website announced that it would change the dates of court hearings according to the circumstances. Should the parties required to attend court have cold symptoms such as fever, the court would consider changing the hearing dates or deadline when necessary.</p> <p>On 7 April 2020, the Tokyo District Court announced that it would change the dates of all hearings scheduled between 8 April and 6 May 2020, except for those pertaining to:</p> <ul style="list-style-type: none"> • Civil Preservation Cases (including interim remedies in administrative cases) • Domestic violence cases • Habeas corpus cases • Urgent civil enforcement cases; and • Urgent bankruptcy cases.

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Australia*	<p>Extended statutory demand period - Both the Commonwealth and all State Governments have introduced a number of policies and incentives to address the immediate financial stress caused by the impact of COVID-19. While there are currently no specific amendments directly affecting a lender's ability to enforce loans or security, fast tracked amendments to the Corporations Act and Bankruptcy Act have extended the period for complying with statutory demands and bankruptcy notices (the most commonly used process for instituting winding up (for corporates) and bankruptcy (for individuals) proceedings) from 21 days to 6 months. Similarly the minimum claim that can form the basis for a statutory demand (corporates) and bankruptcy (individuals) notice has been increased to \$20,000 (from \$2,000 and \$5,000 respectively).</p> <p>Relaxation of insolvent trading provision - Additional amendments to the Corporations Act have introduced a COVID-19 safe harbour providing directors with temporary relief from personal liability for any debts incurred (in the ordinary course of the company's business during an initial 6-month period) while the company is insolvent. While this is helpful in the short-term, directors will need to ensure that they continue to comply with their other statutory and fiduciary duties (e.g., act with "care and diligence") which are not relieved under the proposed amendments.</p> <p>Relief for tenants and landlords - On 30 March 2020, the National Cabinet agreed to a moratorium on evictions over the next six months for commercial and residential tenancies in financial distress who are unable to meet their commitments due to the impact of COVID-19. On 3 April 2020, the National Cabinet announced further progress on the issue of commercial tenancies. They agreed that a mandatory code of conduct guided by certain principles will be developed and subsequently legislated by State and Territory Governments to apply for tenancies where the tenant is eligible for the Commonwealth Government's JobKeeper assistance and is a small- or medium-sized enterprise (less than \$50 million turnover). Additionally, the National Cabinet agreed to offer land tax relief to landlords under commercial leases who negotiate rent relief agreements with tenants facing financial distress due to COVID-19. NSW and Victoria allocated \$440m and \$420m, respectively, to these tax relief packages.</p> <p>ASX compliance update - The ASX has released a compliance update providing guidance and temporary relief to ASX-listed entities. The measures are intended to provide emergency assistance to ASX-listed entities and to mitigate against dishonest market activity in the volatile COVID-19 economic environment. Put simply the ASX has re-affirmed that a listed entity's continuous disclosure obligations do not extend to predicting the unpredictable. Relief measures introduced include permitting back-to-back trading halts, increasing placement capacity from 15% to 25% and a waiver of the one-for-one cap on non-renounceable entitlement offers.</p> <p>ASIC - Similar to ASX, the ASIC is assisting listed companies access capital by giving temporary relief to enable certain 'low doc' offers (including rights offers, placements and share purchase plans) where the listed entity has been suspended for a total of up to 10 days (previously 5 days) in the preceding 12-month period. ASIC has said its priorities would focus on "the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters".</p> <p>FIRB - Effective from 29 March 2020, all proposed foreign investment in Australia that is subject to the Foreign Acquisitions and Takeovers Act 1975 will require approval, regardless of the value of the investment or the nature of the foreign investor. The Treasurer has effectively reduced all monetary screening thresholds to \$0.</p>	<p>Court registries currently remain open (Federal Court registry is online and by phone). However, each Court has implemented slightly different rules and procedures in response to the COVID-19 health issues, but the overall approach is consistent. Courts such as the Federal Court have vacated imminent listings that require in person attendance with parties to be advised of alternative arrangements. In criminal matters, priority is being given to matters where the accused is in custody. Victorian Court of Appeal matters are proceeding by video-link only and, where appropriate, matters will be dealt with 'on the papers'. The Commercial Division of the Victorian Supreme Court is taking steps to minimise in-person appearances with interlocutory matters being dealt with 'on the papers' and, relevantly, all winding up application are currently being heard by telephone.</p>

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	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Korea	<p>The Korean government has implemented emergency financial measures, which allow small- and medium-sized enterprises and small business owners to delay the repayment of loans for at least six months and suspend making interest payments. Please click here for more details.</p> <p>These measures apply to loans that have maturity dates before 30 September 2020. Also, loans of small business owners or individuals that are in arrears may be purchased by the government for restructuring, including postponement of repayment or long-term repayment in instalments.</p>	<p>Courts in South Korea have started to reopen after a few weeks of temporary halt in their operations. Before they were reopened, courts took measures such as postponing trials except for urgent cases that require arrest, injunction or suspension of execution and conducting arguments remotely through videos.</p>

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Malaysia	<p>In the Economic Stimulus Package 2020 (Stimulus) issued on 27 February 2020, the Malaysian government (Government) asked financial institutions to provide financial relief to borrowers through rescheduling or restructuring of loans, and the Government will provide a 100% stamp duty exemption arising from the rescheduling, restructuring or payment deferment. The exemption is given from March 1, 2020, until December 31, 2020.</p> <p>The Stimulus also provides that the Bank Negara Malaysia (Central Bank) will establish US\$453 million worth in loans with interest rate of 3.75% for SMEs and each SME will be eligible to receive up to US\$226,000 with a tenor of 5.5 years which includes a 6 month payment moratorium. The government will provide banks with an 80% guarantee on the loans.</p> <p>On 25 March 2020, in order to ease the cash flow of SMEs, the Central Bank announced that banking institutions will offer a deferment of all loan/financing repayments for a period of 6 months, with effect from 1 April 2020. This offer is applicable to performing loans, denominated in Malaysian Ringgit, that have not been in arrears for more than 90 days as at 1 April 2020; and deferment in conventional loans or Islamic financing payment obligations (except credit card) are automatically effected by Financial Institutions if the loans/financing meet those criteria. Further, corporate borrowers and customers may request for a moratorium on loan/financing repayment from their respective banks.</p> <p>During the period of deferment of loan and financing payment, borrowers/customers with loans/financing that meet the conditions do not need to make any payment, and no late payment charges will be imposed. Interest/profit will continue to be added (accrue) on loan/financing payments that are deferred. Loan/financing payment resumes after the deferment period.</p> <p>Financial Institutions are not allowed to impose late penalty charges on the deferred amount. In other words, the loan/financing payment is just deferred by 6 months.</p>	<p>The Malaysia Movement Control Order (“MCO”) which was initially scheduled to last until 31st March 2020 was extended until 14th April 2020.</p> <p>The premises of all Courts are generally closed save for:</p> <ul style="list-style-type: none"> • urgent civil matters; • online case management or e-review (which can take place merely by logging in and without the need for tokens or certificates); and • fresh charge and bail. <p>During the MCO, notice applications filed under certificate of urgency can be conducted and heard online subject to the mutual consent of parties and the same being permitted by the Court.</p> <p>The President of the Industrial Court announced that “all case managements and hearings that have been fixed in (the) Industrial Court of Malaysia (ICM) during this period will be postponed. Parties will be notified of new dates after the end of the MCO period.”</p> <p>The Asian International Arbitration Centre (AIAC) announced that its premises and office would be closed in accordance with the MCO and given those constraints, it would not be able to register “new Adjudication, Mediation and MyNIC matters”. All existing and ongoing ADR matters remain unaffected.</p> <ul style="list-style-type: none"> • Given that the MCO has been further extended to 28th April 2020 (Phase 3), all Courts remain closed save for the previous measure taken by the Courts i.e. urgent civil matters; online case management or e-review; and fresh charges and bail. • Certain conveyancing and corporate practices that were related to the sector approved by the Ministry of International Trade and Industry (“MITI”) excluding those that provide advice only (“Permitted Legal Sector”), are allowed to operate during Phase 3 of the MCO subject to the approval being granted by the MITI. • It is not clear which sector that was approved by MITI that is related to legal services. Bar Council has issued circulars stating that they are seeking clarification from the Minister/MITI

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
		<p>on the “legal services” that are allowed to operate during the Phase 3 of the MCO and are currently awaiting the response from MITI.</p> <ul style="list-style-type: none"> • Litigation and other related services are expressly excluded from being a part of the legal services that are allowed to operate during this Phase 3 of the MCO. • The permission to operate and the movement of the employees for the Permitted Legal Sector during this Phase 3 of the MCO are subject to the following Standard Operating Procedure (“SOP”): <ol style="list-style-type: none"> 1) Operation hours from 10:00 a.m. to 4:00 p.m. and only allowed to operate on every Tuesday and Thursday; 2) Only legal firms that are operating in the Green Zone are allowed to operate and the legal services can only be provided to clients from the Green Zone; 3) The clients are not allowed to move to other zones if the clients are from zones other than Green Zone; 4) The number of employees that are allowed to work at one time/day are based on the composition of the firm including branches based on the declaration made by the firm during the application to operate during this Phase 3 of the MCO made to MITI. The percentage of employees allowed to work are as follows: <ul style="list-style-type: none"> - More than 21 employees – Maximum approval of 20%; - 10 – 20 employees – Maximum approval of 30%; and - Less than 10 employees – Maximum approval of 3 employees. 5) The total number of employees attending to work are required to be recorded in a special registration log book and the details of the employees such as the name, identification number, time entered and time they left the office etc. The attendance record has to be kept by the firm for at least 6 months; 6) The permission to operate does not include meeting with the clients. Consultation with the clients are only for very urgent matters with the attendance of the clients limited to 1 person at any one time; 7) The attendance of the clients is required to be recorded in a clients’ registration log book and the details of the clients such as the name and identification number, purpose of the meeting, time entered and time they left the office etc. The attendance record has to be kept by the firm for at least 6 months; 8) Legal firms are encouraged to use the services of the despatch to obtain the signature or written approval from the clients for particular documents with the practice of social distancing apart from the compliance with the procedure for prevention of Covid-19 such as the use of hand sanitizer, gloves and face mask; 9) Preparation of invoices to the clients involving all sector of the legal services are to be maintained i.e. during the end of the month as with the process of preparation of salary;

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
		<p>10) This SOP is to be read with the Standard Operating Procedure for the Permission to Operate And Movement of Employees During this Period of Movement Control Order issued by MITI.</p> <p>11) The Government is entitled to revoke the permission granted to operate in the event of breach of the SOP.</p>

* Malaysia section is provided by Meiyen Tan at Oon & Bazul.

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Singapore	<p>The measures taken so far by the Government of Singapore have been targeted at cushioning the impact of the business slow down on families and small to medium sized enterprises through direct outreach programs.</p> <p>On 26 March 2020, the Monetary Authority of Singapore (MAS) announced that it will provide up to US\$60 billion of funding to banks in Singapore through a new MAS USD Facility, which is intended to support more stable USD funding conditions in Singapore and to facilitate USD lending to businesses in Singapore and the region.</p> <p>Individual banks have themselves undertaken measures including providing moratoria on principal repayments for loans, including home mortgages and business loans as well as extending bridging loans in the form of additional working capital financing to affected businesses.</p> <p>The Monetary Authority of Singapore in conjunction with the Association of Banks in Singapore, the Life Insurance Association, the General Insurance Association, and the Finance Houses Association of Singapore, announced a series of measures designed to ease the growing financial pressures on individuals and SMEs.</p> <p>The measures were announced on 31 March 2020 and cover borrowing by individuals and SMEs as well as a number of insurance products which require regular premium payments. In this context, SMEs are entities with an “annual sales turnover of up to S\$100m; or ii) employment size up to 200 workers”.</p> <p>Under the new measures, amongst other things, SMEs may elect to defer principal repayments on their secured term loans up to 31 December 2020. The maturity period may also be extended for a duration equivalent to the deferral. There are some qualification criteria, including the ability of the borrower to continue to pay interest and a favourable assessment of the borrower’s collateral by the relevant lender.</p> <p>The COVID-19 (Temporary Measures) Act (the Act) has been enacted in Singapore with the aim of granting temporary relief to individuals and businesses who are unable to fulfil their obligations under certain contracts because of the COVID-19 pandemic. The Act is quite specific in its application and is applicable to a variety of contracts, but has some implications for certain loans and the insolvency regime in Singapore.</p> <p>The relief granted under the Act is initially for a period of six months (which may be extended by law for a further period of up to 12 months). The commencement date for the relief period will be announced by the government imminently.</p> <p>The Act prohibits financial institutions from commencing court proceedings, security enforcement over movable and immovable property that is used for business or trade and insolvency proceedings against borrowers and their guarantors whose breach or non-performance has been materially caused by the COVID-19 pandemic. The application is limited to loan agreements relating to certain types of secured loans granted to SMEs and must be requested by the defaulting borrower or its guarantor.</p>	<p>All matters have been suspended for four weeks commencing on 7 April 2020. The Supreme Court, State Courts and Family Justice Courts will hear only essential and urgent matters during this period. Whether or not a matter is “essential and urgent” is to be determined by each relevant court. To the extent a matter is to be heard, it will be heard as far as possible via telecommunication in order to minimise in person appearances before the courts.</p>

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
	<p>Assuming the qualifying criteria and notification requirements are met, then the creditor will be prohibited from taking any of the prescribed actions against the debtor for the duration of the relief period.</p> <p>The Act also increases the monetary threshold for the commencement of insolvency proceedings against corporate entities from S\$10,000 to S\$100,000. The time period for responding / satisfying / defeating a statutory demand from a creditor has also been extended from 21 days to 6 months.</p> <p>The MAS has stated that “[a]part from the secured SME loans specified [...], [the Act] has no implications for banks on any of their other facilities, transactions, or contracts, or for Singapore’s role as an international financial centre”.</p> <p>The Act will also introduce a defence against personal liability for directors (absent fraud) where they have incurred the debt in the ordinary course of business during the prescribed period and before the appointment of a judicial manager or liquidator in the case of companies, before the appointment of a liquidator for LLPs and before the passing of a resolution approving the winding up or the making of a court order directing winding-up of a registered business trust.</p> <p>During the relief period under the Act, look-back periods and timings for certain avoidance actions commenced during winding-up and for the purposes of judicial management will also be extended.</p>	

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Philippines	<p>Various banks and insurance companies are reported to allow payment extension to eligible customers. The grace periods vary from 30 days to 90 days.</p> <p>On 16 March 2020, Bangko Sentral ng Pilipinas Governor Benjamin Diokno said that the central bank "advised" lenders to give debt relief to borrowers to help them cope with the coronavirus disease outbreak.</p> <p>On 1 April 2020, the Philippines Government announced a 30-days moratorium on loan payments under the Implementing Rules and Regulations of Section 4(aa) of Republic Act No. 11469 (IRR). Under the new IRR, banks are to provide a 30-days grace period for all loans with principal and/or interest falling due within the Enhanced Community Quarantine Period without incurring interest on interest, penalties, fees and other charges. The moratorium is subject to the revision of the President pursuant to his emergency powers.</p> <p>On 14 April 2020, Finance Secretary stated that the Philippines would not consider a moratorium on the national government's debt obligations despite the COVID-19 pandemic.</p> <p>On 15 April 2020, the Philippines Government announced that it will reduce the interest rates and RRR for banks, which is expected to pump an extra P220 billion into the economy. It will also extend tax compliance deadlines and exempt the documentary stamp tax (DST) for credit extensions or restructuring of loan payments.</p> <p>On 15 April 2020, the Philippines Government announced that it has signed a US\$500-million loan agreement with the World Bank aimed at enabling the Philippines Government to augment the urgent financing requirements arising from COVID-19 pandemic. This loan is scheduled for accelerated disbursement by 30 April 2020.</p>	<p>On 20 March 2020, Chief Justice Diosdado Peralta ordered the physical closure of all courts in the country due to the rising cases of the novel coronavirus disease (COVID-19).</p> <p>On 8 April 2020, the Supreme Court of the Philippines announced that, in view of the extension of the Enhanced Community Quarantine over Luzon until 30 April 2020, all courts nationwide will remain closed until 30 April 2020. All court hearings nationwide except urgent matters will be suspended until 30 April 2020. However, electronic communications of the court and electronic filings will continue to operate.</p>

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Thailand	<p>On 25 March 2020, The Royal Thai Government and The Bank of Thailand implemented financial measures for the individual and small- and medium-sized enterprises and small business owners to delay the repayment of loans for at least three months and suspend making interest payments.</p> <p>In addition, The Royal Thai Government approved that The Bank of Thailand can arrange for soft loans to SMEs. The availability amount shall be determined later.</p> <p>No specific measures for large corporate debt and NPLs have been issued yet.</p> <p>With effect from 20 April 2020, The Royal Thai Government issued two Emergency Decrees to mitigate the impact of the COVID 19 pandemic on the economy.</p> <ul style="list-style-type: none"> • The first Emergency Decree is an Emergency Decree on financial assistance to SMEs. Under this Emergency Decree, the Bank of Thailand will lend a fund to financial institutions with a total availability amount of not more than THB500 billion where after obtaining the loan, the financial institutions must use this loan for lending to SMEs with (i) a loan amount of not more than 20% of the outstanding loan amount as of 31 December 2019; and (ii) an interest rate not be greater than 2% per year for the first two years. • The second Emergency Decree is the Emergency Decree for maintaining the national financial and economy stability. Under this second Emergency Decree, a fund (with total value of not exceeding THB400 billion) will be established and Bank of Thailand will be the sole unit holder. This fund will be used for investing in new series of bonds issued for redeeming the existing, mature and investment grade bonds where the bond issuers are listed companies operating business in Thailand. <p>If there are (i) a lack of liquidity in bond markets due to the effect of the COVID 19 and (ii) for a need to maintain national financial and economy stability, the fund (with approval from Finance Minister) can directly buy the existing bonds in secondary market.</p>	<p>Even though the courts continue to operate as normal, the Judicial Administration Committee approved on 23 March 2020 that any court appointments from 24 March 2020 to 31 May 2020 shall be postponed as appropriate.</p>

	Measures taken by central banks and governments in response to COVID-19 pandemic	The Courts
Vietnam	<p>The State Bank of Vietnam ("SBV") has issued guidance and various recommendations for credit institutions and branches of foreign banks ("FIs").</p> <p>Circular No. 01/2020/TT-NHNN of the SBV dated and taking effect from 13 March 2020 ("Circular 01") provides guidance for credit institutions and FIs regarding debt repayment terms; and, exemption or reduction of interest rates to support customers affected by COVID-19.</p> <p>Customers who are (i) under obligation to repay principal and/or interest arising between 23 January 2020 and 3 months from the date the Prime Minister announces the end of the COVID -19 pandemic; and (ii) are unable to pay the debts and/or interest on time because of a decrease in revenues and income caused by the impact of the COVID -19 pandemic are entitled to credit support by FIs, which is expected to include:</p> <ul style="list-style-type: none"> • Exemption from or reduction in interest: FIs to waive or reduce the interest applicable to the relevant customer in alignment with the FIs' internal regulations for outstanding loans arising from credit extension operations (except for activities of buying and investing in corporate bonds); • Provide credit extensions for business stabilisation: loans eligible for credit extensions are those having outstanding amounts which have not become overdue, or have become overdue for no more than 10 days from due, or overdue since 23 January 2020 until the 16th day of the effective date of Circular 01. The extension for each loan should not be more than 12 months from the original maturity date. <p>FIs are to have great flexibility in determining eligible debts of customers being affected by the COVID -19 situation including, among others, the criteria regarding customers whose revenues and incomes are reduced because of the COVID -19 pandemic.</p> <p>For the time being, the SBV has no specific instructions regarding the key criteria for FI's to review in assessing whether a customer has been affected by the COVID-19 pandemic and therefore needs credit support. However, on 16 April 2020, the SBV has directed provincial branches of the SBV to establish a hotline to receive and resolve questions and complaints in relation to the application of Circular 01.</p> <p>In addition, the SBV has decided to reduced several interest rates to help boost the economy during the COVID-19 pandemic as of 17 March 2020, such as the refinancing rate (from 6% p.a. to 5% p.a.), discount rate (from 4% p.a. to 3.5% p.a.).</p> <p>In response to directives of the Prime Minister, the SBV encourages credit institutions and foreign banks to follow instructions and coordinate with the local SBV to obtain approvals from competent authorities to postpone meetings of the GSM or Members' Council or hold meetings electronically during the COVID-19 epidemic. The SBV has also directed that credit institutions must operate normally and ensure that they provide without interruption all services, especially internet banking and ATM services, while limiting to the minimum the number of staff working at the office.</p>	<p>The Supreme Court has issued directive No. 02/2020/CT-CA dated 10 March 2020 ("Directive 02"), official letter No. 113/TANDTC-VP dated 30 March 2020 ("OL 113"), according to which court hearings and meetings will be postponed from opening until the end of 15 April 2020 for cases whose statute of limitations have not expired during the suspension period, for case whose statute of limitations have already expired (including extensions), hearings and meetings can be held provided that protection measures are ensured.</p> <p>The Supreme Court also directs that receipt of hand-delivered petitions and other proceedings document at the court's office as well as direct service of court's summons, notices and other documents to the parties and authorities are temporarily suspended until the end of 15 April 2020, and delivery of these documents should be made using the postal service or electronically.</p> <p>In response to Directive 16, the Supreme Court, in its official letter No. 118/TANDTC-VP dated 31 March 2020 ("OL 118"), has directed officials and employees of all courts to work from home for 15 days starting from 1 April 2020 while ensuring operation as normal.</p> <p>On 16 April 2020, the Supreme Court issued official letter No. 127/TANDTC-VP ("OL 127") directing courts located in 12 provinces, cities having high risk to continue to comply with Directive 02, OL 113 and OL 118 until 22 April 2020 (inclusive) in response to Notice 158 of the Prime Minister. In addition, according to OL 127, for provinces, cities other than the those listed as having high risk as of 16 April 2020 court's hearings and meetings may be held normally in compliance with proceedings regulations and court's officials and employees may come to work at the office, provided that protection measures are ensured.</p>

INSOLVENCY PROCESS COMPARISON – CERTAIN ASIAN JURISDICTIONS

	Australia	China	Hong Kong	India	Indonesia	Singapore	Japan	Thailand	Vietnam
Primary Legislation	Corporations Act	Enterprise Bankruptcy Law	Companies (Winding Up and Miscellaneous Provisions) Ordinance Companies Ordinance	Insolvency and Bankruptcy Code, 2016 Companies Act, 2013	Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations Law No. 40 of 2007 on Limited Liability Companies	Companies Act	Civil Rehabilitation Act Corporate Reorganization Act Bankruptcy Act Companies Act Act on Recognition of and Assistance for Foreign insolvency Proceedings – for cross-border insolvency.	Bankruptcy Act Civil and Commercial Code	Law on Bankruptcy Law on Enterprises Law on Credit Institutions
Corporate rescue regime/ reorganisation	Voluntary administration	Restructuring Compromise	No corporate rescue regime. Consensual restructuring possible. Scheme of arrangement (often with provisional liquidation).	Resolution process under the IBC Scheme of arrangement	Suspension of debt payments process ("PKPU")	Judicial management Scheme of arrangement (with moratorium)	Civil rehabilitation Corporate reorganisation	Business rehabilitation	Restoration procedure
Basic insolvency test (non-exhaustive and subject to variation for different processes)	Unable to meet its due payment obligations.	Bankruptcy/ compromise Unable to meet its due payment obligations, and (1) Total liabilities > the value of its assets; and for voluntary bankruptcy (2) the debtor clearly lacks the ability to discharge its liabilities. Restructuring Unable or real possibility that unable to meet its due payment obligations	Company is unable to pay its debts taking into account its prospective and contingent liabilities (on either cash flow or balance sheet basis)	Payment default of > INR100k	Bankruptcy Debtors has two or more creditors and has not paid at least one debt fallen due Suspension of debt payments Debtor cannot pay its debts or reasonably foreseeable that it cannot	1. Unable to meet its due payment obligations; or 2. Total liabilities > the value of its assets.	1. Unable to meet its due payment obligations; 2. Suspends payment of its debts; 3. Total liabilities > the value of its assets.	Unable to meet its due payment obligations.	Unable to pay the due debts within three months from the due date
Petitioner	<i>Winding-up</i> 1. Creditors	Bankruptcy/ Restructuring 1. Creditors	<i>Winding-up</i> 1. Creditors	<i>Corporate insolvency resolution process</i> 1. Financial creditor	Bankruptcy/ Suspension of debt payments process 1. Creditor	<i>Judicial management</i> 1. Creditors	<i>Civil rehabilitation/ Bankruptcy</i> 1. Creditors	<i>Bankruptcy</i> 1. Creditors	Bankruptcy/ Suspension of debt payments process 1. Creditor

	Australia	China	Hong Kong	India	Indonesia	Singapore	Japan	Thailand	Vietnam
	2. Debtors 3. Shareholders <i>Voluntary administration</i> 1. Directors 2. Secured creditors 3. Liquidators	2. Debtors <i>Compromise</i> Debtors	2. Directors 3. Debtors 4. Shareholders <i>Scheme of arrangement</i> 1. Creditors 2. Debtors 3. Shareholders 4. Liquidators	2. Operational creditor 3. Debtor	2. Debtor	2. Directors 3. Debtors <i>Scheme of arrangement</i> 5. Creditors 6. Debtors 7. Shareholders 8. Liquidators	2. Directors 3. Debtors <i>Corporate reorganization</i> 1. Creditors 2. Directors 3. Shareholders <i>Special liquidation</i> 1. Creditors 2. Liquidators 3. Shareholders 4. Auditor	2. Debtors <i>Business Rehabilitation</i> 1. Creditors 2. Debtors	2. Debtor 3. Shareholders <i>Restoration Procedure</i> Creditors
Control over the management and assets of the debtor retained by:	<i>Voluntary administration</i> Administrator <i>Winding-up</i> Liquidators	Court appointed administrator.	<i>Before a winding up order is made</i> Court may appoint provisional liquidators. <i>After a winding up order is made</i> Liquidator	Court appointed insolvency professionals	<i>Bankruptcy</i> Court appointed curator (receiver) and supervisory judge. <i>Suspension of debt payments process</i> Supervisory judge jointly with the directors and administrator.	<i>Judicial management</i> Court appointed judicial manager <i>Scheme of arrangement</i> Directors	Debtor (unless an injunction order is made) <i>Business Rehabilitation</i> Plan preparer/ Plan administrator.	<i>Bankruptcy</i> Official receiver <i>Business Rehabilitation</i> Plan preparer/ Plan administrator. <i>Restoration Procedure</i> Licensed asset manager	
Moratorium	<i>Winding-up</i> Yes, upon winding-up or the commencement of a provisional liquidation, except with the leave by court. <i>Voluntary administration</i> Yes, with certain exceptions mainly	Yes, upon acceptance of insolvency application by court.	<i>Before a winding up order is made</i> No automatic stay, unless the court orders otherwise. <i>After a winding up order is made or a provisional liquidator is appointed</i> Yes, no actions may be initiated against the	Yes, once the court admits an application for initiating the corporate resolution process, it will make an order staying all proceedings and enforcement actions for the 180 day resolution period (extendable by a maximum of 90 days).	<i>Bankruptcy</i> Yes, from the date of the bankruptcy decision up to 90 days, unless otherwise terminated by the receiver, supervising judge or court. <i>Suspension of debt payments process</i>	<i>Judicial management</i> Yes, once order of judicial management is made. <i>Scheme of arrangement</i> Automatic 30-day moratorium available upon application.	No automatic stay on filing of the bankruptcy petition. Usually apply for injunction at the same time restraining disposition of assets and payment of debts. <i>Business Rehabilitation</i> Yes, until expiry or cancellation of the Rehabilitation Plan.	<i>Bankruptcy/ Restoration Procedure</i> Yes, from the date a bankruptcy petition is accepted by the court.	

	Australia	China	Hong Kong	India	Indonesia	Singapore	Japan	Thailand	Vietnam
	relating to secured creditors.		debtor unless with the leave of the court. <i>Scheme of arrangement</i> No automatic stay		Yes, throughout the entire period of suspension.				
Position of secured creditors	<i>Winding-up</i> Secured creditor can enforce its security. <i>Voluntary administration</i> Secured creditor cannot enforce its security unless, for example, implemented within prescribed period following notice of administration.	<i>Restructuring</i> Secured creditor can't enforce its security, unless it can be shown to the court that the secured asset will likely suffer damage. <i>Bankruptcy/ compromise</i> Secured creditor can enforce its security.	Secured creditor can enforce its security.	<i>Winding-up</i> A secured creditor can choose to stand outside the liquidation and enforce its security. <i>Corporate insolvency resolution process</i> During the insolvency process, secured creditor can't enforce its security.	<i>Bankruptcy</i> Secured creditor can't enforce its security for up to 90 days after the bankruptcy decision, unless otherwise approved by the receiver, supervising judge or court. <i>Suspension of debt payments process</i> Yes, secured creditor can't enforce its security throughout the entire period of suspension, which can last up to 270 days.	<i>Judicial management</i> Secured creditor can't enforce its security. <i>Scheme of arrangement</i> Secured creditor can enforce its security unless a contrary court order is made.	<i>Bankruptcy proceeding</i> Retain right to enforce the security. A secured creditor may co-op with a bankruptcy trustee to sell voluntarily. However, a bankruptcy trustee may petition to court to discharge the secured interests through the voluntary sale of the security. The secured creditor may recover its claim from the sale proceeds but a portion of it may go to the bankruptcy estate. <i>Civil rehabilitation</i> May generally exercise their secured claims. <i>Corporate reorganization</i> Secured creditors may only enforce in accordance with the reorganisation proceedings.	<i>Bankruptcy</i> Secured creditor can enforce its security. <i>Business Rehabilitation</i> Secured creditor can't enforce its security, unless otherwise approved by the court or after a year following the date on which the Court received a request for enforcement.	<i>Bankruptcy</i> Secured creditor can't enforce its security (but may apply for the court's leave to enforce the secured assets which are likely to be damaged or dramatically devalued) <i>Restoration Procedure</i> Secured creditors may only enforce their security with the approval of the court. Otherwise, the secured assets shall be handled in accordance with the resolution of the creditor's meeting. If it is decided by the creditors' meeting that the secured assets are not necessary for the Restoration of the enterprise, secured creditors can enforce their security in relation to those assets accordingly.
Claw back periods	<i>Uncommercial transactions</i> Connected parties - Within 4 years prior to the relation-back day Non-connected parties - Within 2 years prior to the relation-back day	<i>Early repayment of undue debts / undervalue transaction- provision of security for an unsecured debt/ waiver of a creditor's rights</i> Within 1 year prior to the court accepting the bankruptcy application	<i>Undervalue transactions</i> Within 5 years prior to the commencement of the winding-up <i>Unfair preference</i> Connected parties - Within 2 years prior to	<i>Preferential transaction / undervalue transaction</i> Connected parties - Within 2 years prior to the onset of insolvency Non-connected parties - Within 1 year prior to the onset of insolvency	<i>Preferential transaction / fraudulent transaction</i> Within 1 year prior to the onset of the bankruptcy	<i>Undervalue transactions</i> Within 5 years prior to the onset of insolvency <i>Unfair preference</i> Connected parties - Within 2 years prior to the onset of insolvency	<i>Bankruptcy/ Corporate Reorganisation/Civil Rehab</i> - Acts known by the debtor to harm creditors - gratis acts in 6 months prior to payment suspension	<i>Fraudulent transactions</i> Within 1 year prior to the filing of the petition of bankruptcy or rehabilitation. <i>Unfair preference</i> Non-connected parties - Within 3 months prior to the filing of the petition	<i>Undervalue transactions</i> Within 6 months prior to the commencement of the Bankruptcy Procedures <i>Unfair preference</i>

	Australia	China	Hong Kong	India	Indonesia	Singapore	Japan	Thailand	Vietnam
	<p>For transactions which intend to defeat or interfere with the rights of any creditors - Within 10 years prior to the relation-back day</p> <p>Unfair preference</p> <p>Connected parties - Within 4 years prior to the relation-back day</p> <p>Non-connected parties - Within 6 months prior to the relation-back day</p> <p>For transactions which intend to defeat or interfere with the rights of any creditors - Within 10 years prior to the relation-back day</p>	<p>Preferential transaction</p> <p>Within 6 months prior to the court accepts the bankruptcy application</p>	<p>the commencement of the winding-up</p> <p>Non-connected parties - Within 6 months prior to the commencement of the winding-up</p> <p>Extortionate credit transaction</p> <p>Within 3 years prior to the commencement of the winding-up</p> <p>Avoidance of floating charges</p> <p>Connected parties - Within 2 years prior to the commencement of the winding-up</p> <p>Non-connected parties - Within 1 year prior to the commencement of the winding-up</p>	<p>Extortionate credit transaction</p> <p>Within 2 years prior to the onset of insolvency</p>		<p>Non-connected parties - Within 6 months prior to the onset of insolvency</p>	<p>- security for pre-existing debts provided after unable to pay debts</p> <p>Avoidance right may remain available up to 20 years from the relevant act.</p>	<p>of bankruptcy or rehabilitation.</p> <p>Connected parties - Within 1 year prior to the filing of the petition of bankruptcy or rehabilitation.</p>	<p>Connected parties - Within 18 months prior to the onset of insolvency</p> <p>Non-connected parties - Within 6 months prior to the onset of insolvency</p>

Notice

Any views presented in this memorandum in connection with any laws other than those of Hong Kong, Thailand and Vietnam are based on our knowledge and understanding of those other laws and regulations obtained from our past experience in handling matters relating to the relevant jurisdictions and by conducting our own research, and also from informal consultations with overseas lawyers from time to time.

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