
CHAMBERS GLOBAL PRACTICE GUIDES

Insolvency 2022

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Vietnam: Law & Practice

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Law and Practice

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1. State of the Restructuring Market

1.1 Market Trends and Changes

Vietnam has emerged successfully from the COVID-19 pandemic and appears to be one of the strongest economies in the region. Buoyed by a strategic position in the global supply chain and a large number of multilateral and bilateral free trade agreements, Vietnam's future looks bright.

That being said, there are potential storm clouds on the horizon for certain economic sectors, particularly with the government's recent concentrated effort to fight corruption at the corporate level, with particular focus on securities and real estate. A number of high-profile current and former government officials have been investigated in 2022 (and in some cases arrested), and the focus has recently turned to the private sector.

On the legal front, there are no particular updates with respect to restructuring and insolvency laws since 2021, but Vietnam has introduced key changes to corporate bond regulations designed to promote transparency and enhance investor protections. Whilst these provisions (which are described below in further detail), together with the anti-corruption campaign, may run the short-term risk of pushing highly leveraged Vietnamese corporates to the brink (particularly those that are top heavy in the real estate sector), most industry experts are of the view that Vietnam's long-term commitment to improving transparency and investor protections in the bond market will ultimately elevate its international standing and promote investor confidence in its developing securities markets.

On 16 September 2022, the Vietnamese government released the long-awaited Decree No

65/2022/ND-CP (the "New Decree") amending Decree No 53/2021/ND-CP on the offering and trading of private domestic corporate bonds and the offering of international corporate bonds. The New Decree aims to enhance transparency in the corporate bond market and appears to be designed to protect investors in several key areas, such as requiring greater specificity in offering documents, setting a floor with respect to bondholder thresholds to approve changes to the terms and conditions of the bonds, and mandating additional information disclosure obligations for issuers. The New Decree also imposes additional requirements and responsibilities on issuers and relevant securities intermediaries, and limits the scope of eligible investors.

One of the most significant changes that will ultimately impact the restructuring space is that the New Decree permits bondholders to request early redemption in certain limited scenarios. The first is where the issuer commits a violation of the laws on the offering and trading of corporate bonds and the breach cannot be rectified. The second is where the issuer breaches the terms of the approved private placement plan and the proposed rectification measure is not approved by bondholders representing at least 65% of the bonds of the same class (or other cases as specifically provided in the private placement plan).

In addition, changes to the terms and conditions of domestic bonds or changes of bondholders' representatives now require approval of bondholders representing at least 65% of bonds of the same class.

These changes represent a key step in ensuring transparency and investor protection in the bond market, which industry experts have considered to be lacking.

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There are also important changes designed to enhance the responsibility of other actors in the bond market, particularly securities intermediaries. The New Decree provides that only securities companies are permitted to provide services of auction, guarantee and agency, and that commercial banks and branches of foreign banks are permitted to provide agency services approved by the State Bank of Vietnam (SBV) and are licensed to engage in depository service by the State Securities Commission. These intermediaries must not be related parties of the issuer.

The New Decree also imposes additional responsibilities on these intermediaries to provide true and accurate information on the bond issuance to the investors and to ensure bonds are distributed to eligible investors only. This is a clear step towards promoting more responsibility on the part of securities intermediaries.

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

2.1 Overview of Laws and Statutory Regimes

The Law on Bankruptcy No 51/2014/QH13 (the “Bankruptcy Law”) came into effect on 1 January 2015, and revised the key features of the previous regulatory regime. The relevant implementing legislation includes Decree No 22/2015/ND-CP (16 February 2015).

The Bankruptcy Law applies a uniform process to debtors in all industries (other than the banking sector). This reflects a change from the prior regulatory regime, which applied special rules for insurance companies, national security and state-owned enterprises or public utilities

(known as “Special Companies”). Although the concept of Special Companies no longer exists in the Bankruptcy Law, as a practical matter courts may still informally refer to older legislation (to the extent it has not been repealed) when hearing cases that involve Special Companies for guidance on matters not specifically covered by the Bankruptcy Law.

Bankruptcy proceedings that involve credit institutions are subject to separate regulations imposed by the SBV, in addition to the Bankruptcy Law procedures. There are a number of joint stock commercial banks that are under special control of the SBV, primarily due to fraud and misconduct.

The Ministry of Justice, the Supreme People’s Court of Vietnam and the Supreme People’s Procuracy released Joint Circular No 07/2018/TTLT-BTP-VKSNDTC-TANDTC (JC 07) on 12 June 2018, which regulates co-operation on enforcement procedures between the civil judgment enforcement agency and the court. The joint circular provides timelines and guidance for the temporary suspension of the enforcement of judgments against the assets of an insolvent company, and for the disposal of the company’s assets in the course of the bankruptcy proceedings.

Decree 82/2020/ND-CP (15 July 2020) sets out sanctions for administrative violations relevant to bankruptcy proceedings.

Apart from the Bankruptcy Law, the Law on Enterprises No 59/2020/QH14 (1 January 2021) (the “Enterprise Law”) provides guidance on voluntary corporate dissolution procedures that occur outside the bankruptcy regime.

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

The Bankruptcy Law does not clearly distinguish between voluntary and involuntary insolvency or restructuring. The requirements for initiating a petition for bankruptcy and the procedures for undertaking an insolvency or restructuring process are largely the same in each case. The most significant difference is whether the petition is made by the company's management or ownership or is brought externally by a creditor.

2.3 Obligation to Commence Formal Insolvency Proceedings

Upon becoming aware that the company is insolvent, the following entities may lodge a bankruptcy petition:

- an unsecured or partially secured creditor;
- an employee of the debtor; or
- a shareholder.

Vietnam's Bankruptcy Law places obligations on individuals holding certain management roles to file a petition for bankruptcy upon becoming aware that the company is insolvent. These include:

- the debtor's legal representative;
- the owner (in the case of a single member limited liability company);
- the chairman of the board (in the case of a joint stock company); and
- the chairman of the members' council (in the case of a multiple member limited liability company).

There is no statutory time limit for a required filing to be made (other than the three-month insolvency test timeframe described in **2.5 Requirement for Insolvency**). Consequently, manage-

ment with a reporting obligation must use their discretion in order to assess the overall financial health of the company in conjunction with their fiduciary duties to comply with law and act in the best interests of the company and its shareholders. Vietnamese law does have the concept of a "zone of insolvency" where director duties are shifted to creditors rather than shareholders. That being said, to the extent any transactions are invalidated during the look-back period, management may be exposed to personal liability for losses incurred if they approved such transactions in an effort to disperse assets, or if they approve prohibited transactions during the bankruptcy process. Administrative fines may also be assessed against such management personnel.

The Enterprise Law also enables the company (or shareholders in the name of the company) to bring claims against management for breach of fiduciary duties, although such proceedings are rare. However, this is often pointed to by industry experts as a potential bright spot for shareholder activism to take root in Vietnam. Individuals may also be subject to administrative fines or, in some cases, may be held criminally liable; they may also be barred from holding management positions in other companies in future.

2.4 Commencing Involuntary Proceedings

The process of filing a petition for bankruptcy is the same whether it is lodged by the company's management personnel, employees or shareholders, or by external creditors. If a petition for bankruptcy is lodged by management, the dossier must include more detailed financial information than if the petition is made by a creditor. The expanded dossier must include financial statements, details about the location and valuation of any assets and a report of any

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efforts made to mitigate the insolvent condition of the enterprise.

2.5 Requirement for Insolvency

In order to commence voluntary or involuntary proceedings under the Bankruptcy Law, the enterprise must be deemed to be insolvent. The Bankruptcy Law defines insolvency as being when a company fails to repay an unsecured or partially secured undisputed mature debt within three months following the due date of the debt.

Insolvency does not require a creditor to have made a claim for repayment, although the petition to commence bankruptcy proceedings must indicate the basis for the request and provide supporting documents showing the overdue debts. A three-month time limit may allow a debtor to repay a single creditor before proceedings are initiated, but does not address the underlying weakness of the debtor.

There is no minimum amount of debt required to meet the insolvency requirement, so even a small amount of debt may suffice to trigger insolvency. Therefore, the parties involved must strive to find balance between the overall financial health of the company and overdue debts.

2.6 Specific Statutory Restructuring and Insolvency Regimes

The Bankruptcy Law removed the concept of Special Companies, such as state-owned enterprises, that were subject to separate proceedings involving a recovery process under the oversight of the relevant state agency. A uniform process now applies to all sectors, other than credit institutions. Before a court can accept a petition for the bankruptcy of a credit institution, that institution must first have been the subject of a special control mechanism under the oversight of the SBV. Once the SBV issues a

decision on the outcome of the special control mechanism, the standard bankruptcy process may continue.

3. Out-of-Court Restructurings and Consensual Workouts

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

Vietnamese corporates and institutional lenders tend to favour corporate insolvency proceedings outside the formal bankruptcy regime. The Bankruptcy Law and its implementing legislation remain largely untested, and lenders (and debtors) hesitate to rely on the process, instead preferring the relative efficiency and flexibility of insolvency pursuant to the Enterprise Law, the provisions of the corporate charter and, if necessary, contractual or commercial remedies. The Bankruptcy Law may not be flexible enough to accommodate the needs of companies with complicated offshore holding structures or significant cross-border assets.

Lenders generally tend to be amenable to informal debt restructuring or refinancing schemes, although credit institution lenders have discretion in opting to restructure debt. There are distinctions between restructuring an onshore loan and an offshore loan, whether by extending the term of the loan or amending the repayment schedule, as the registration of an offshore loan with the SBV may need to be amended to reflect the revised agreement. Vietnamese law more strictly regulates a borrower's ability to refinance onshore and offshore loans, although complex refinancing transactions are becoming more common.

While debtors tend to eschew the Bankruptcy Law framework, the regulation accommodates

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negotiation between the company and the creditors at key points in the process. Nevertheless, companies often avoid the more formal process in favour of out-of-court workouts. If a company proceeds with insolvency under the Enterprise Law, it may create an ad hoc restructuring plan by negotiating one-on-one with creditors, pursuing remedies under contract rights or refinancing its debts.

Vietnamese law opens the door to opportunities for consensual restructuring negotiations before the commencement of the formal bankruptcy process. In the time between a petition to initiate bankruptcy proceedings being filed and the court issuing a decision to open bankruptcy proceedings, the company has the option to initiate negotiations (for up to 20 days) with its creditors in order to avoid the bankruptcy process entirely. If the parties reach an agreement, the proceedings will be cancelled. If the parties fail to reach an agreement within 20 days, the proceedings will automatically recommence.

Once the bankruptcy proceedings begin, a creditors' meeting must be convened. Creditors must submit a notice requesting payment of debts within 30 days of the court commencing bankruptcy procedures. The asset manager or asset management company responsible for managing the proceedings (akin to a trustee or receiver) then has 15 days to produce a list of creditors. The court must convene a creditors' meeting within 20 days of the list of creditors being finalised.

At the initial meeting, the creditors may determine that the debtor is not yet insolvent and request the suspension of the insolvency proceedings, or ask the company to prepare a recovery plan, or request to proceed with a decision of bankruptcy. If the creditors pass a

resolution to undertake recovery measures, the debtor has 30 days to develop a recovery plan setting out a proposal to raise capital, modify the company's business activities, dispose of assets, or restructure its shareholding.

3.2 Consensual Restructuring and Workout Processes

The consensual liquidation of a company may proceed either as a corporate insolvency process in accordance with the Enterprise Law and the company's charter, or within the framework of the Bankruptcy Law.

If the owner or board of directors of a Vietnamese company wishes to liquidate the company, they must first pass a decision on liquidation in accordance with the company's charter. The decision must indicate the reason for dissolution, the plan for the liquidation of commercial contracts and payment of debts, and a proposal for settling obligations related to employees. The company must submit the decision to the licensing authorities and to its creditors, and the company's owners or board must carry out the approved plan for the liquidation and dissolution of the company.

The company's charter may provide further details on the process. For example, it may require the owner or board to convene a liquidation committee to oversee the process, or to appoint auditors or other advisers.

The debts must be paid in a particular order, beginning with salaries and social insurance obligations and taxes. Only then can other debts be paid, and any balance remaining may be distributed to the owners.

After completing the liquidation plan, the company must submit an application for dissolution

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to the licensing authority, which will deregister the company from the national corporate registry within five business days of receiving the application for dissolution (or if an application for dissolution is not submitted, within 180 days of receiving the initial corporate decision on liquidation, unless an appeal is lodged).

The Bankruptcy Law also provides an opportunity to develop a consensual restructuring plan. Once the bankruptcy proceedings begin, a creditors' meeting must be convened. Creditors must submit a notice requesting payment of debts within 30 days of the court commencing bankruptcy procedures. The receiver then has 15 days to produce a list of creditors. The court must convene a creditors' meeting within 20 days of the list of creditors being finalised.

The creditors may determine that the debtor is not yet insolvent and request the suspension of the insolvency proceedings, or ask the company to prepare a recovery plan, or request to proceed with a decision of bankruptcy. If the creditors pass a resolution to undertake recovery measures, the debtor has 30 days to develop a recovery plan setting out a proposal to raise capital, modify the company's business activities, dispose of assets, or restructure its shareholding.

3.3 New Money

While there are no standard approaches, restructuring using new money contributions may be incorporated into the rehabilitation plan prepared by the debtor pursuant to the creditors' meeting.

3.4 Duties on Creditors

Vietnamese law does not impose special duties on creditors or the company in the specific context of out-of-court restructuring or consensual workouts, other than the general requirements

arising under the Civil Code or pursuant to the Enterprise Law.

3.5 Out-of-Court Financial Restructuring or Workout

With respect to a liquidation under the Enterprise Law, the corporate decision or resolution must be passed by the owners or management of the company in accordance with its standard voting process. Minority shareholders do not have special statutory rights in this context, unless special rights have been negotiated in the company's charter or in a shareholders' agreement. Creditors of the company would not have direct input in the corporate decision and development of the liquidation plan, although they are required to receive notice of the plan once it is approved.

In the context of a restructuring plan developed at the request of the creditors' committee under the Bankruptcy Law, the plan proposed by the debtor must first be approved by the judge. The plan is also circulated to the creditors and the receiver for comments, and must then be approved by the creditors' committee.

All creditors included on the list of creditors have the right to attend meetings of the creditors' committee. A quorum of creditors representing at least 51% of the total value of unsecured debt must be present in order to convene a meeting. A resolution of the creditors' committee, including regarding the recovery plan, must be approved by a simple majority of those in attendance, representing at least 65% of the total unsecured debt.

The receiver and the creditors' committee will then oversee the implementation of the recovery plan.

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4. Secured Creditor Rights, Remedies and Priorities

4.1 Liens/Security

Secured creditors may take mortgages over:

- buildings;
- land use rights;
- equity;
- movable property;
- bank accounts;
- intellectual property; and
- contractual rights.

However, offshore creditors may not take mortgages over land use rights.

4.2 Rights and Remedies

It is possible for a secured creditor to enforce security without filing a claim in court. The secured party must first deliver an enforcement notice. As a practical matter, the process of enforcement varies depending on the nature of the collateral. If the securing party is not co-operative, it may be necessary to resort to obtaining a court judgment.

4.3 Special Procedural Protections and Rights

This is not applicable in Vietnam.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

A fully secured creditor is not entitled to file a bankruptcy petition nor vote in the creditors' committee; only unsecured and partially secured creditors may seek to initiate bankruptcy proceedings and vote in the creditors' committee meetings.

5.2 Unsecured Trade Creditors

Please see 6.13 Non-debtor Parties.

5.3 Rights and Remedies for Unsecured Creditors

Please see 5.1 Differing Rights and Priorities.

5.4 Pre-judgment Attachments

The receiver or an unsecured creditor may petition the court to provide interim relief during the bankruptcy proceedings, including attachment of the company's assets, freezing bank accounts, or permission for the sale of perishable goods.

5.5 Priority Claims in Restructuring and Insolvency Proceedings

The assets of the debtor are distributed in the following order:

- costs and expenses related to the bankruptcy proceeding;
- unpaid wages, social insurance and employee benefits;
- debts arising after the beginning of bankruptcy proceedings, as part of the business recovery plan;
- financial obligations to the state, including taxes;
- unsecured debts payable to creditors; and
- any secured debts that were not fully repaid because the value of the secured assets was not sufficient.

Any remaining assets will be distributed to the shareholders.

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6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

6.1 Statutory Process for a Financial Restructuring/Reorganisation

Please see 7.1 Types of Voluntary/Involuntary Proceedings.

6.2 Position of the Company Claims Against the Company

Within five business days of the court accepting the bankruptcy petition, certain enforcement actions will be suspended, including:

- enforcement of a court or arbitral judgment against assets of the company (other than enforcement of a judgment for compensation related to life, health or honour, or to pay wages to employees);
- civil, commercial or employment proceedings to which the debtor is a party; and
- the enforcement of security over assets of the insolvent company by secured creditors (other than assets that may be destroyed).

The moratorium on these actions will be lifted if the court does not issue a decision beginning bankruptcy proceedings, or if bankruptcy proceedings commence once the recovery plan terminates.

JC 07 further regulates co-operation on enforcement procedures between the civil judgment enforcement agency and the court. The joint circular provides timelines and guidance for the temporary suspension of the enforcement of judgments against the assets of an insolvent company.

Doing Business and Borrowing Money

Once the court issues a decision beginning bankruptcy proceedings, the company will continue to operate its normal business under the supervision of the court and the receiver, subject to certain limitations. These limitations may be modified by the requirement of any recovery plan approved by the creditors' committee.

The company may not:

- dispose of or donate assets;
- pay any unsecured debts (unless they arise after bankruptcy proceedings have begun, in which case permission from the receiver is necessary);
- abandon any claims; or
- convert unsecured debts into debts that are secured by the company's assets.

The company must obtain consent from the receiver before:

- mortgaging, purchasing or selling any assets;
- selling or converting any equity;
- terminating a contract;
- paying debts that arise after bankruptcy proceedings have begun; or
- paying employee salaries.

Once the creditors' committee has approved a recovery plan, the company must carry out its business in accordance with the plan, under the supervision of the receiver and the creditors' committee. The debtor may incur secured or unsecured debt in accordance with the scope of the recovery plan and with the oversight of the receiver.

The company must provide the receiver with a detailed summary on the status of the recovery plan every six months.

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Management

The company's directors and management, including its legal representative, will remain in place in order to manage the business under the oversight of the receiver and the court. The creditors' committee has the right to request the court to replace the company's legal representative.

6.3 Roles of Creditors

Please see 7.3 Organisation of Creditors or Committees.

6.4 Claims of Dissenting Creditors

Please see 7.3 Organisation of Creditors or Committees.

6.5 Trading of Claims Against a Company

There is no clear basis in the Bankruptcy Law to permit the trading of claims against a debtor. Furthermore, the list of creditors is established early in the bankruptcy process, and any amendments to the list pursuant to a claim would require the approval of the court. Enforcement of any such trades may need to occur outside the context of the bankruptcy proceedings.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

Please see 6.2 Position of the Company.

6.7 Restrictions on a Company's Use of Its Assets

Please see 6.2 Position of the Company.

6.8 Asset Disposition and Related Procedures

The receiver must approve any sale of assets after the bankruptcy proceedings begin. However, if the company's recovery plan includes a sale of assets, such sale may proceed once it

is approved by the creditors' committee, pursuant to the approved plan and subject to the oversight of the receiver. The Bankruptcy Law provides flexibility to the debtor in developing the plan.

6.9 Secured Creditor Liens and Security Arrangements

The court is authorised to determine the disposition of secured assets, including enforcement or sale, based on the report of the receiver.

If the secured assets are not necessary to implement the business recovery plan, enforcement will then be subject to the terms of the security agreement. Otherwise, the creditors' meeting will issue a resolution addressing the treatment of the secured assets.

6.10 Priority New Money

Please see 6.2 Position of the Company.

6.11 Determining the Value of Claims and Creditors

Each creditor must send a claim for debts to the receiver within 30 days of the decision to initiate a bankruptcy proceeding.

Before bankruptcy proceedings begin, the value of the claims is determined when the court issues its decision to begin the bankruptcy proceedings. The value of the claims is updated when the court issues a decision declaring the company bankrupt.

6.12 Restructuring or Reorganisation Agreement

If the creditors' committee approves a recovery plan but the debtor does not implement the plan, the court will issue a decision declaring the company bankrupt.

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6.13 Non-debtor Parties

The court may temporarily suspend the implementation of a contract, or invalidate a transaction during the look-back period, thereby releasing a non-debtor party from liability.

The court must review any suspended contracts within five business days of issuing a decision to begin the bankruptcy proceeding, in order to determine whether resuming performance of the contract will damage the company. If the court orders termination of the contract, the counterparty may claim damages as an unsecured creditor in the bankruptcy proceedings.

6.14 Rights of Set-Off

A creditor may agree with the debtor to offset obligations arising out of contracts entered into before the court issued a decision to begin bankruptcy proceedings, subject to the approval of the receiver.

There is some risk that a set-off may ultimately be held invalid if it is deemed to be a payment obligation that has not yet come due. Such payments are prohibited during the six months prior to the initiation of bankruptcy proceedings.

6.15 Failure to Observe the Terms of Agreements

If the debtor does not comply with the terms of the recovery plan to the satisfaction of the creditors' committee and the receiver, the court will issue a decision declaring the company bankrupt.

6.16 Existing Equity Owners

Please see 5.5 **Priority Claims in Restructuring and Insolvency Proceedings.**

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

The processes for voluntary and involuntary proceedings under the Bankruptcy Law 2014 are largely the same.

- An interested party files a petition for bankruptcy. This may be lodged by the legal representative of the company or externally by an unsecured or partly secured creditor.
- The court must accept the petition for bankruptcy and notify the company and the creditors. The company has an opportunity to seek postponement of the acceptance in order to negotiate with its creditors to withdraw the petition for bankruptcy. This is the first significant opportunity for a negotiated resolution.
- If the parties do not seek a postponement and the court considers that there is a basis to proceed, the court will issue a decision beginning bankruptcy proceedings.
- Within 30 days of the court issuing a decision beginning bankruptcy proceedings, the company must make an inventory of its assets, and creditors must send their claims to the receiver. The receiver must prepare and publicise a list of creditors within 15 days of the creditors lodging their claims.
- The court must convene the first meeting of the creditors' committee. All creditors named on the list of creditors have the right to attend the meeting. However, a quorum representing at least 51% of the total value of unsecured debt must be present in order to convene a meeting. Resolutions can be approved by a majority of unsecured creditors in attendance, representing at least 65% of the total unsecured debt.

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- The creditors' committee must begin by determining whether to suspend the proceedings if the debtor does not meet the qualifications for insolvency, ask the debtor to prepare a recovery plan, or petition the court to proceed directly to a declaration of bankruptcy.
- If the creditors' committee requests the debtor to prepare a recovery plan, the company has 30 days to prepare a proposal for review and comment by the judge and the receiver. The plan is then submitted to the creditors' committee for approval. The plan must be implemented within three years of its approval by the creditors' committee (or within another time limit selected by the creditors).
- If the initial creditors' committee meeting immediately sought a declaration of bankruptcy, or if the creditors' committee did not approve the recovery plan, or if the debtor did not implement the plan within the time limit, the judge will issue a decision declaring the company bankrupt.
- The assets of the company are then liquidated and distributed in accordance with the priority set out in the Bankruptcy Law.

7.2 Distressed Disposals

Please see 6.2 Position of the Company.

7.3 Organisation of Creditors or Committees

Once the bankruptcy proceedings begin, a creditors' meeting must be convened. Creditors must submit a notice requesting payment of debts within 30 days of the court commencing bankruptcy proceedings. The receiver then has 15 days to produce a list of creditors. The court must convene a meeting of the creditors' committee within 20 days of the list of creditors being finalised.

At the initial meeting, the creditors may:

- determine that the debtor is not yet insolvent and request the suspension of the insolvency proceedings;
- ask the company to prepare a recovery plan; or
- request to proceed with a decision of bankruptcy.

If the creditors pass a resolution to undertake recovery measures, the debtor has 30 days to develop a recovery plan setting out a proposal to raise capital, modify the company's business activities, dispose of assets or restructure its shareholding.

All creditors included on the list of creditors have the right to attend meetings of the creditors' committee. A quorum of creditors representing at least 51% of the total value of unsecured debt must be present in order to convene a meeting. A resolution of the creditors' committee, including regarding the recovery plan, must be approved by a simple majority of those in attendance, representing at least 65% of the total unsecured debt.

The creditors' committee works with the receiver to review the ongoing financial situation of the company and the process of inventorying and distributing assets.

8. International/Cross-Border Issues and Processes

8.1 Recognition or Relief in Connection With Overseas Proceedings

The Bankruptcy Law acknowledges the possibility of foreign court judgments that impact assets in Vietnam or a Vietnamese corporate debtor.

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Recognition and enforcement in Vietnam of a judgment rendered by a foreign court regarding the assets of a company incorporated in Vietnam must proceed in accordance with the general principles of Vietnamese law on the enforcement of foreign judgments. While this indicates a growing recognition of the global context of bankruptcy proceedings, the practical difficulties of executing a foreign court award in Vietnam remain nearly insurmountable.

Vietnam has signed Mutual Legal Assistance Treaties with 11 countries, including the UK, France, China and Korea, but the scope of such treaties may be limited. For example, the Mutual Legal Assistance Treaty with the UK is limited to criminal matters.

In the absence of such a treaty, the judgments of foreign courts are not enforceable against assets in Vietnam. Any proceeding or action for relief in Vietnam (such as enforcement against a specific asset) would need to be independently undertaken in Vietnam – eg, by seeking contractual remedies or a civil injunction.

8.2 Co-ordination in Cross-Border Cases

There is no legal basis for Vietnamese courts to co-operate with foreign jurisdictions in cross-border bankruptcy cases, or to otherwise co-ordinate proceedings. This is a potential hindrance to successfully resolving cross-border insolvencies and there are a number of live cases in 2022 where this is proving to be problematic.

8.3 Rules, Standards and Guidelines

Vietnamese laws do not contemplate the application of decisions or rulings by a foreign jurisdiction within Vietnam, and Vietnamese courts would not make a determination as to the precedence of foreign law in the context of a bankruptcy proceeding.

8.4 Foreign Creditors

Foreign-owned entities or offshore creditors should be handled no differently from Vietnamese entities in bankruptcy proceedings in Vietnam. The Bankruptcy Law applies to a foreign invested entity that is licensed and operating in Vietnam, and foreign creditors would participate in the claims process in the same manner as Vietnamese creditors.

If Vietnamese bankruptcy proceedings involve offshore assets or obligations, the Vietnamese courts will address such claims under the terms of a Mutual Legal Assistance Treaty or, if one is not available, under the Civil Code and the general principles of reciprocity.

8.5 Recognition and Enforcement of Foreign Judgments

As a practical matter, judicial interactions with foreign courts are rare and procedurally complex to initiate. Without a Mutual Legal Assistance Treaty, enforcing a foreign judgment in Vietnam is not practical.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

An asset management officer (or an asset management firm) must be appointed to act as a receiver and manage the process, prepare the list of creditors, and prepare the inventory of assets. The receiver reports to the creditors' committee on the status of the bankruptcy process.

The asset manager is required to hold a valid certificate as an asset management officer, and may be a lawyer, auditor or otherwise experienced in finance.

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The individual filing a petition for bankruptcy may propose an asset manager, but the appointment is ultimately made by the court.

The creditors' committee acts on behalf of the unsecured creditors, and is authorised to assemble a representative board to oversee the committee's activities and liaise with the court and the receiver.

9.2 Statutory Roles, Rights and Responsibilities of Officers

The asset manager is responsible for collecting and verifying the documents necessary for the operation of the debtor during the bankruptcy process. They must prepare the asset inventory and list of creditors.

Once the bankruptcy process begins, the asset manager supervises the company's assets and oversees the recovery, management and distribution of assets.

The asset manager also reports to the court or the creditors' committee on the operations of the debtor.

The creditors' committee acts on behalf of the unsecured creditors, and is authorised to assemble a representative board to oversee the committee's activities and liaise with the court and the receiver.

9.3 Selection of Officers

Please see 9.2 Statutory Roles, Rights and Responsibilities of Officers.

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

10.1 Duties of Directors

Vietnamese law does not require a special duty of care to creditors as a company approaches insolvency – the so-called “zone of insolvency”. Once a company is undergoing the bankruptcy process, however, management personnel may be liable for losses resulting from approving or permitting the company to undertake transactions that are prohibited by the Bankruptcy Law or that have not been approved by the receiver.

Management personnel can be held personally liable for damages incurred by the company if they breach their fiduciary duties or violate the law. In addition, there may be disciplinary action once the bankruptcy process is complete. For example, a director or officer may be disqualified from holding future management positions within a company.

10.2 Direct Fiduciary Breach Claims

Vietnamese law is not clear as to whether creditors may assert claims directly against management personnel for breach of fiduciary duties to perform obligations arising under the Bankruptcy Law. A creditor would likely need to seek recourse through a claim under the Civil Code.

11. Transfers/Transactions That May Be Set Aside

11.1 Historical Transactions

The court will invalidate the following transactions conducted during the six months prior to the initiation of insolvency proceedings in order to preserve the assets of the company:

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- asset sales that are not made at market price;
- the conversion of unsecured debt into debt that is secured by the company's assets;
- the payment of a debt that has not yet become due, or a payment that is larger than the amount of debt due, or setting off an obligation in favour of a creditor;
- donations of assets;
- transactions outside the normal business scope of the company; and
- other transactions made in order to dispose of corporate assets.

In addition, if the company is in the process of carrying out any contracts at the time insolvency proceedings are initiated, the court may temporarily suspend further implementation of those contracts in order to mitigate the loss of funds or resources.

11.2 Look-Back Period

Transactions made within the six months before the court begins insolvency proceedings may be set aside. If the transaction involves a related party of the debtor, this timeframe is expanded to 18 months.

Related parties include the following:

- the parent company or a subsidiary of the debtor;
- management personnel at the debtor or at the debtor's parent company;
- one or a group of individuals with operational control of the debtor; or
- a direct family member of a manager at the debtor or of a controlling shareholder of the debtor.

Once the court has declared a transaction invalid, any recovered assets must be accounted for in the total assets of the debtor within ten business days.

11.3 Claims to Set Aside or Annul Transactions

The Bankruptcy Law permits individual creditors, as well as the receiver and even the debtor itself, to petition the court to set aside a transaction that meets the look-back requirements. The court itself also has discretion to determine whether a transaction ought to be set aside.

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Mayer Brown has more than 40 lawyers in its global restructuring practice, operating in jurisdictions across the Americas, Asia and Europe, enabling the firm to provide comprehensive assistance to clients around the world. It advises corporate debtors, company directors, lenders (throughout the capital structure), bondholders, liquidators, receivers, administrators, trustees, debtor-in-possession (DIP) loan providers, insurers, pension fund trustees, special servicers and landlords on all aspects of restructuring, bankruptcy and insolvency. The firm's experi-

ence in a broad array of industries enables it to quickly identify the proper context for the business and legal issues that can arise during the course of an out-of-court restructuring or an in-court insolvency proceeding. The team has extensive experience in cross-border and formal insolvencies, working closely with colleagues in other regional offices on multi-jurisdictional matters. It is able to provide clients with comprehensive and innovative solutions that serve their business needs.

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